TEXT OF AMENDMENTS TO HOUSE BILL 4703

AMENDMENT NO. 1 WITHDRAWN

Mr. Fresolo of Worcester moves to amend House Bill 4703 by striking and inserting the following:
SECTION 1. Section 178F of chapter 6 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out in lines 18 and 19 the words "any secondary addresses and work address" and inserting in place thereof the following words:- and secondary address and work address provided any offender who has no secondary address shall be required to wear a GPS tracking device.

AMENDMENT NO. 2 ADOPTED

Mr. Evangelidis of Holden moves to amend House Bill 4703 by adding the following new section:-
Section XX:, Subparagraph e of Section 178D in Chapter 6 of the General Laws as appearing in the 2008 Edition is hereby amended by striking, in lines 31 and 32, the words "or level 2".

AMENDMENT NO. 3 ADOPTED, AS CHANGED

Ms. Haddad of Somerset moves to amend the text of HB 4703 by inserting after Section 3 the following new section:
Section 3a Section 167 of Chapter 6 of the General Laws is hereby amended by striking in the definition of "criminal Offender Record Information" by striking the first sentence and inserting in its place the following two sentences:
"Criminal Offender Record Information, records and data in any communicable form compiled by any criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. Criminal offender record information shall include records and data in any communicable form compiled by any criminal justice agency in this and in other states and within the United States Government for the purposes of criminal background checks for employees and potential; employees of Massachusetts General Laws, Chapter 71B approved special education school programs."

AMENDMENT NO. 4 WITHDRAWN

Ms. Haddad of Somerset moves to amend the text of House bill 4703 by inserting after
Section 12, the following new section:
Section 12a - Section 168 of Chapter 6 of the Massachusetts General Laws is hereby amended by striking the second sentence in paragraph four and inserting in its place thereof the following sentence:
"Said systems shall be designed to insure the prompt collection, exchange, dissemination and distribution of such criminal offender records information as may be necessary for the efficient administration and operation of criminal justice agencies, and to connect such systems directly and indirectly with similar systems in this and other states and any system within the United States government"

AMENDMENT NO. 5 WITHDRAWN

Ms. Haddad of Somerset moves to amend the text of House bill 4703 by inserting after Section 51, the following section:
Section 51a. Section 1 of Chapter 28a of the General Laws is hereby amended by inserting at the end the following new clause (7): -
(7) "to assure that every provider of child care services has electronic access to criminal history information for current or prospective employees, volunteers and consultants that is compiled by the Massachusetts Criminal History Systems Board and all similar agencies in other states and agencies under the jurisdiction of the United States government within twenty-four hours of the receipt of a request."

AMENDMENT NO. 6 WITHDRAWN

Ms. L'Italien of Andover moves to amend House bill 4703 by inserting, in line 461, after the words "chapter 258B," the following:-

"an elderly or disabled person hiring personal care attendants, or other personal caretakers under the commonwealth's personal care attendant program or other state home care program,"

AMENDMENT NO. 7 WITHDRAWN

Ms. Peisch of Wellesley moves to amend Senate Bill No. 2220 by inserting after section 69A the following section:-

SECTION 70. Chapter 94C of the General Laws, as appearing the 2006 official Edition, is hereby amended by inserting the following section:

Section 34A.

(a) A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to the provisions of section 34 if the evidence for the charge of possession of a controlled substance was gained as a result of the seeking of medical assistance.

(b) A person who experiences a drug related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to section 34 if the evidence for the charge of possession of a controlled substance was gained as a result of the overdose and the need for medical assistance.

(c) The act of seeking medical assistance for someone who is experiencing a drug related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substance Act.

(d) Nothing in contained herein shall prevent anyone from being charged with trafficking in a controlled substance, distribution of a controlled substance and/or possession of a controlled substance with intent to distribute.

(e) A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for being in the presence of a controlled substance pursuant to the provisions of section 35 if the evidence for the charge of being in the presence of a controlled substance was gained as a result of the seeking of medical assistance.

(f) A person who experiences a drug related overdose and is in need of medical assistance shall not be charged or prosecuted for being in the presence of a controlled substance pursuant to section 35 if the evidence for the charge of being in the presence of a controlled substance was gained as a result of the overdose and the need for medical assistance.

AMENDMENT NO. 8 REJECTED

Mr. Fennell of Lynn moves to amend the text of House Bill 4703 in Section 21, in clause (3)(i), by inserting after the word "custody", the following words:-", provided, however, housing authorities operating pursuant to Chapter 121B shall be authorized to obtain criminal offender record information for felony convictions for 20 years following their disposition, including termination of any period of incarceration or custody."

AMENDMENT NO. 9 REJECTED

Mr. Fennell of Lynn moves to amend the text of House Bill 4703 in Section 21, in Clause 7 by striking out the word "may" and inserting in place thereof the word "shall".

AMENDMENT NO. 10 WITHDRAWN

Mr. Jones of North Reading, Mr. Peterson of Grafton, Mr. Hill of Ipswich, Ms. Poirier of North Attleboro, and Mr. deMacedo of Plymouth move that House Bill 4703 be amended by inserting at end thereof the following new section:

"SECTION X. Section 1 of Chapter 275 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting at the end thereof, the following words:-

"; provided further that any law enforcement officer, in the course of official business, shall be permitted to carry such weapons as are authorized by his appointing authority while in any state or county courthouse.

As used in this section, 'law enforcement officer' shall mean any state, county, or municipal police officer or special state police officer authorized to make arrests or serve criminal process."

AMENDMENT NO. 11 WITHDRAWN

Mr. Jones of North Reading, Mr. Peterson of Grafton, Mr. Hill of Ipswich, Ms. Poirier of North Attleboro, and Mr. deMacedo of Plymouth move that House Bill 4703 be amended by inserting after section 51 (as printed), the following new sections:

"SECTION X. Chapter 22E of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out section 3, and inserting in place thereof the following section:

Section 3. Any person who is arrested by virtue of process, or is taken into custody by an officer and charged with the commission of a felony, and who upon arrest has been arraigned pursuant to the applicable court rules under the Massachusetts Rules of Criminal Procedure, shall submit a DNA sample to the department. The sample shall be collected by a person authorized under section 4 of this chapter subsequent to arraignment, in accordance with regulations or procedures established by the director. The results of such sample shall be made part of the state DNA database.

SECTION X. Section 12 of said chapter 22E, as so appearing, is hereby amended by striking out, in line 6, the figure "$1,000" and inserting in place thereof the following figure:- $2,000,- and by striking out, in line 7, the words "six months" and inserting in place thereof the following words: - 1 year.

SECTION X. Section 13 of said chapter 22E, as so appearing , is hereby amended by striking out, in line 4, the figure "$1,000" and inserting in place thereof the following figure:- $2,000,- and by striking out, in line 5, the words "six months" and inserting in place thereof the following words: - 1 year.

SECTION X. Section 15 of said chapter 22E, as so appearing, is hereby amended by inserting after the word "expunged", in line 3, the following words: - if the original offense upon which the collection of DNA is based does not result in a conviction; or."

AMENDMENT NO. 12 ADOPTED

Mr. Jones of North Reading, Mr. Peterson of Grafton, Mr. Hill of Ipswich, Ms. Poirier of North Attleboro, and Mr. deMacedo of Plymouth move that House Bill 4703 be amended by inserting after section 36 (as printed), the following new section:

"SECTION X. Chapter 6 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 178B the following new section:-

Section 178B1/2. Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 of this chapter and 28 U.S.C. §534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

Municipalities may by local ordinance establish the appropriate fee charged to applicants for administering a fingerprinting system. For purposes pursuant to section 2LLL of chapter 29, $30 of said fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund; and the remainder of the fee may be retained by the licensing authority for costs associated with the administration of the system."

AMENDMENT NO. 13 ADOPTED, AS CHANGED

Mr. Peterson of Grafton and Mr. Jones of North Reading move to amend House Bill 4703 by striking SECTION 113 in its entirety and inserting in place thereof the following section:-

"SECTION 113. Chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after section 58B the following new section:-

Section 58C. (1) The commonwealth may move, based on dangerousness, for an order of pretrial detention for a person who has been charged with unlawful possession of a weapon or a machine gun, as defined in section 121 of chapter 140, during the commission of a predicate offense listed in section 58A.

(2) Upon the appearance before a superior court or district court judge of an individual charged with an offense listed in subsection (1) and upon the motion of the commonwealth, the judicial officer shall hold a hearing pursuant to subsection (3) and issue an order that, pending trial the individual shall be detained under subsection (4).
(3) When a person is held under arrest for an offense as outlined in subsection (1) and upon a motion by the commonwealth, the judge shall hold a hearing to determine if the conditions of subsection (1) exist to order a pretrial detention under subsection (4).
The hearing shall be held immediately upon a person's first appearance before a court unless that person, or the attorney for the commonwealth, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed seven days, and a continuance on motion of the attorney for the commonwealth may not exceed three business days. During a continuance, the individual shall be detained upon a showing that there existed probable cause to arrest the person and that the person meets the criteria set forth in subsection (1). At the hearing, such person shall have the right to be represented by counsel, and, if financially unable to retain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross examine witnesses who appear at the hearing, and to present information. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at a hearing. In a detention order issued pursuant to the provisions of said subsection (4) the judge shall (a) include written findings of fact and a written statement of the reasons for the detention; (b) direct that the person be committed to custody or confinement in a corrections facility separate, to the extent practicable from persons awaiting or serving sentence or being held in custody pending appeal; and (c) direct that the person be afforded reasonable opportunity for private consultation with his council. The person may be detained pending completion of the hearing.
(4) If, after a hearing pursuant to the provisions of subsection (3), the direct or superior court justice finds by clear and convincing evidence that the defendant meets the criteria of subsection (1), said justice shall order the detention of the person prior to trial. A person detained under this subsection shall be brought to trial as soon as is reasonably possible, but in absence of good cause, the person so held shall not be detained for a period exceeding ninety days excluding any period of delay as defined in Massachusetts Rules of Criminal Procedure Rule 36(b)(2). A justice may not impose a financial condition under this section that results in the pretrial detention of the person; nothing in this section shall be interpreted as limiting the imposition of a financial condition upon the person to reasonably assure his appearance before the courts.
(5) A person subject to an order of pretrial detention issued under this section shall not be eligible for conditional release
(6) Nothing in this section shall be construed as modifying or limiting the presumption of innocence."

AMENDMENT NO. 14 WITHDRAWN
Mr. Jones of North Reading, Mr. Peterson of Grafton, Mr. Hill of Ipswich, Ms. Poirier of North Attleboro, and Mr. deMacedo of Plymouth move that House Bill 4703 be amended by inserting at the end thereof the following new sections:
"SECTION X. Section 19 of Chapter 22C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the first sentence the following sentence:
The secretary of public safety shall have the authority to promulgate regulations relative to the issuance of identification cards to state police officers.

SECTION X. Chapter 41of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking section 98D in its entirety and inserting in place thereof the following section:
Section 98D. Each city or town, and the Massachusetts Bay Transportation Authority Transit Police Department, shall issue to every full time police officer employed by it an identification card bearing the officer's photograph and identity. The secretary of public safety shall have the authority to promulgate regulations relative to the issuance of identification cards to police officers. Such card shall be carried on

the officer's person, and shall be exhibited upon lawful request for purposes of identification."

AMENDMENT NO. 15 WITHDRAWN
Representative Gobi of Spencer moves that the bill be amended in subparagraph 24 of Section 21 by adding at the end thereof the following:
"Those whose data may be requested shall extended to also include any referee, umpire or other official involved in supervising play."

AMENDMENT NO. 16 ADOPTED
Mr. Koutoujian of Waltham moves to amend H4703 by inserting after section 56 the following new sections:

SECTION 1: Chapter 71 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 2B the following section:-
Section 2C. All school districts in the Commonwealth shall implement a specific policy and discipline code to address teen dating violence in public schools. Such policies shall clearly state that dating violence will not be tolerated and shall include guidelines for addressing alleged incidents of dating violence. Such policies may include a teen
dating violence prevention task force comprised of staff, students and parents to provide
awareness training and education for the school community. Such policies would include defining the issue of teen dating violence, recognizing warning signs, identifying issues of confidentiality, safety and appropriate legal school-based interventions.

SECTION 2: Section 1 of chapter 71 of the General Laws, as appearing in the 2006 Official Edition, shall be amended by inserting in line 19 after the words, "emotional development", the following words:-
"safe and healthy relationships with a focus on preventing sexual and domestic violence".

AMENDMENT NO. 17 WITHDRAWN
Mr. Koutoujian of Waltham moves to amend H4703 by inserting after section 107 the following new sections:

SECTION 1. The General Laws, as appearing in the 2004 Official Edition, are hereby amended by inserting after chapter 258C the following new chapter as chapter 258D:-

CHAPTER 258D.
An Act Relative to Profits from Crime.

Section 1. The following words as used in this section shall have the following meanings, unless the context otherwise requires:
"Contracting party", any person, firm, corporation, partnership, association or other legal entity which contracts for, pays, or agrees to pay a defendant consideration which it knows or reasonably should know may constitute proceeds related to a crime. "Conviction", whether or not a sentence is imposed, a finding or verdict of guilty or of not guilty by reason of insanity, a plea of guilty, or an adjudication of delinquency or of youthful offender status as defined in section 52 of chapter 119.
"Crime", any violation of Massachusetts law that is punishable by imprisonment in state prison and any federal offense committed in the commonwealth that is punishable by death or imprisonment for a term of more than 1 year. Crime shall also include any offense committed by a juvenile which would be a crime as defined herein if the juvenile were an adult.
"Defendant", a person who is the subject of pending criminal charges or has been convicted of a crime
"Division", the division of victim compensation and assistance within the department of the attorney general.

"Proceeds related to a crime", any assets, material objects, monies, and property obtained through the use of unique knowledge or notoriety acquired by means and in consequence of the commission of a crime from whatever source received by or owing to a defendant or his representative, whether earned, accrued, or paid before or after the disposition of criminal charges against the defendant.
"Victim", any natural person who suffers physical, emotional or financial harm, or the threat of physical, emotional or financial harm as the result of the commission of a crime, and the estate, legal guardian, and other family members of such person.

Section 2. A contracting party shall, within 30 days of the agreement or 30 days before a payment, submit to the division a copy of its contract or a summary of the terms of any oral agreement or payment.

Section 3. Within 30 days from the receipt of a contract, agreement or notice of payment to a defendant or his representative, or upon its own initiative if no contract or agreement or notice is submitted, the division shall determine whether the terms of the contract or agreement or payment include proceeds related to a crime as defined in section 1, and, if so, whether such proceeds are substantially related to a crime, rather than relating only tangentially to, or containing only passing references to, a crime.
Section 4. Within 15 days of the determination required by section 3, the division shall notify the contracting party of its determinations by certified mail.

Section 5. A contracting party aggrieved by the division's determination under section 3 may request reconsideration of the determination by the program director. Such request for reconsideration must be filed within 15 days of the date of mailing of the notice of the division's determination. The division shall notify the contracting party by certified mail of the determination upon reconsideration within 20 days of the request for reconsideration. Such notice shall include information regarding the contracting party's right to a petition for judicial review of the determination of the program director in accordance with section 14 of chapter
30A.

Section 6. If the provisions of section 2 are violated, the division may petition the superior court for an order of enforcement. Such action shall be brought in the county in which the defendant resides, the county in which the crime was committed, or in Suffolk County. Upon a finding that a contracting party has violated either sections 2 the court shall, in addition to any other relief, order that an appropriate amount of money or other consideration be paid to, or an appropriate bond be posted with, the division, or impose on the contracting party a civil penalty of the value of the contract or agreement. If the court finds such violation to have been knowing or willful, it shall impose a civil penalty up to 3, but not less than 2, times the value of the contract or
agreement. To the extent monies or other consideration received by the division as a result of such order exceed the value of the contract or agreement, they shall be deposited into the
victim compensation fund maintained by the attorney general in accordance with section 4(c) of chapter 258C.

Section 7. The division, upon receipt of a contract or other agreement to pay or notice of payment to a defendant, shall take reasonable steps to notify all known victims of the crime about the existence of a contract, agreement or notice of payment. Notifications shall be made by certified mail to the victim's last known address. The division shall also provide publication in a newspaper of general circulation in the county in which the crime was committed to publicize the existence of proceeds related to the crime. Such notice shall be made by the division
once every 6 months for 1 year from the date of receipt of the contract, agreement or notice of payment. The division may provide for such additional notice as it deems necessary. Failure to notify a victim, as required herein, or failure on the part of the division to take any other action required by this chapter, shall not result in the imposition of liability on the division or any division employee.

Section 8. Notwithstanding any other provision of the General Laws with respect to the timely commencement of an action, including, but not limited to, section 2A of chapter 260 of the General Laws and section 2 of chapter 229 of the General Laws, any victim shall also have the right to bring a civil action to recover money damages from a defendant or his representative within 3 years of the last mandatory publication provided for in section 7.

Section 9. In order to make the determinations required by section 3,or to determine whether any provision of this chapter is being violated or to make any other determination required by this chapter, the division shall be authorized to issue returned within 15 days from the date of service. Whenever a person fails to comply with a civil investigative demand served on him pursuant to this section, the division may petition the superior court for an order of
enforcement. Such action shall be brought in the county in which the defendant resides, the county in which the crime was committed, or in Suffolk County.

Section 10. The division shall have the right to apply for any remedies available under civil practice law and rules that are appropriate to furthering the purpose of this chapter.

Section 11. Any action taken by a defendant, or his representative, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, that results in defeating the purpose of this chapter shall be null and void.

Section 12. The division shall have the authority to promulgate rules and regulations pursuant to chapter 30A as may be necessary to carry out the provisions of this chapter.

SECTION 2. Section 2A of chapter 260 of the General. Laws is hereby amended by inserting after the first sentence the following sentence: - Actions for torts against a criminal defendant by the victim as defined by section 1 of chapter 258D shall be tolled during any period of incarceration, parole or probation of the defendant for the crime committed against the victim.

AMENDMENT NO. 18 WITHDRAWN
Mr. Koutoujian of Waltham moves to amend H4703 by inserting after section 96 the following new sections:

Section 1. of chapter 258B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting, after the word “delinquency”, in line 10, the following words:- or conviction as a youthful offender;
Section 2. Said section 1 of chapter 258B, as so appearing, is hereby further amended by striking, in lines 12-14, the words “or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made” and inserting, in place thereof, the following words:- adjudicated as a delinquent or convicted as a youthful offender, or against whom a finding of sufficient facts is made;
Section 3. Said section 1 of said chapter 258B, as so appearing, is hereby further amended, after the word “stepparent” in lines 15-16, the following word:- grandparent;
Section 4. Said section 1 of said chapter 258B, as so appearing, is hereby further amended by inserting, after the word “victim” in line 20, the following words:-“Orientation”, a familiarization with the courtroom setting, court personnel, and rules of the court, to the extent practicable under the circumstances as required within this chapter; this requirement may be satisfied through the use of diagrams, photographs, or other reasonable methods;
Section 5. Said section 1 of chapter 258B, as so appearing, is hereby further amended by striking, in line 25, the word “which”, and inserting, in place thereof, the following word:- that;
Section 6. Said section 1 of said chapter 258B, as so appearing, is hereby further amended, by deleting,

after the word “incompetent” in line 31, the words: “or deceased” and inserting, in place thereof, the words:- “, the family members of such person if the person is deceased even if no arrest, indictment, or complaint has been issued”;
Section 7. Said section 1 of chapter 258B, as so appearing, is hereby further amended by striking, in line 40, the words “is expected to”, and inserting, in place thereof, the following word:- may;
Section 8. Said section 1 of said chapter 258B, as so appearing, is hereby further amended by inserting, after the word “prosecution”, in line 41, the following words:- or family member or guardian if such person is a minor, incompetent or deceased;
Section 9. Subsection (b) of section 3 of said chapter 258B, as so appearing, is hereby amended by inserting, in line 16, after the word “all”, the following words:- adult and juvenile;

Section 10. Subsection (d) of said section 3 of said chapter 258B, as so appearing, is hereby amended by striking, in lines 31-34, the words “protection from local law enforcement agencies from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts” and inserting, in place thereof, the following words:- assistance in developing safety plans and appropriate referrals to address harm, threats of harm, or fears arising out of their cooperation with law enforcement and prosecution efforts;
Section 11. Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking out subsection (i) in its entirety and replacing it with the following new subsection:-

(i) for victims, family members, and witnesses, to be provided, by the court as outlined in section 17 of chapter 211B, with a secure waiting area or room which is separate from the waiting area of the defendant or the defendant’s family, friends, attorneys or witnesses, and separate from any district attorney’s office. The court shall designate a waiting area at each courthouse. Designation of said areas shall be made in accordance with the implementation plan developed by the interagency task force as described in the following section.

Section 12. There shall be a task force established to conduct a court-by-court assessment and develop an implementation plan regarding the designation or creation of separate and secure waiting areas (SSWA) for victims and witnesses of crime in the commonwealth’s district and superior courthouses, as required under subsection (i) of section 3 of chapter 258B and section 17 of chapter 211B.
The task force shall be chaired by both the executive director of the Massachusetts office for victim assistance and the chief justice for administration and management or their designees; the task force shall include, but not be limited to: the chair of the victim and witness assistance board or her designee; one (1) victim/public member of the victim and witness assistance board chosen by the chair; one (1) community-based victim services provider chosen by the executive director of the Massachusetts office for victim assistance; the commissioner of the department of capital asset management or his designee; one (1) district attorney victim witness program director to be chosen by the president of the Massachusetts district attorneys association; one (1) representative from the court clerks chosen by the chief justice for administration and management; one (1) representative of chief probation officers to be chosen by the commissioner of probation; one (1) representative of the administrative office of the trial court fiscal department chosen by the chief justice for administration and management; and one (1) representative of the court facilities department chosen by the chief justice for administration and management. Additional members may be appointed by the governor in consultation with the co-chairs of the task force.
Within 180 days of the passage of this act, the task force shall convene and develop a plan for conducting the court-by-court assessment and a timeline to guide the completion of the implementation plan. The task force shall complete the implementation plan and file such plan with the chairs of the house and senate ways and means committees, the chairs of the house and senate judiciary committee, and the clerks of the house and the senate no later than 545 days after the effective date of this act. The implementation plan shall include, but not be limited to: (1) a definition of a separate and secure waiting area under subsection (i) of section 3 of chapter 258B; (2) a list of courthouses that do and do not have separate and secure waiting areas that meet the definition; (3) the feasibility of allocating existing space for use as a separate and secure waiting area in those courts that do not have one; (4) a comprehensive fact-based

analysis of the fiscal and operational impacts, if any, of such allocations; (5) a recommendation on who would staff the SSWAs; (6) the fiscal impact of such staffing recommendations, if any; (7) a timeline for designating or creating said spaces in those courthouses in which allocation of such space is deemed feasible; (8) a declaration of the sequence in which separate and secure waiting areas shall be designated or created in courthouses in which the task force has determined that such allocation is feasible; and (9) a recommendation for interim accommodations, where allocation of such space is not deemed immediately feasible and such interim accommodations are practicable. For those district and superior courthouses undergoing new construction or "substantial renovation," as defined by the task force, the separate and secure waiting areas shall be included in the final plans and completed construction. The task force chairs shall file an implementation progress report every 365 days and a final plan to the chairs of the house and senate ways and means committees, the chairs of the house and senate judiciary committee, and the clerks of the house and the senate.

Section 13. Said section 17 of chapter 211B, as so appearing, is hereby amended by striking out the words, "The chief justice for administration and management shall, subject to appropriation and to available resources, provide a separate and secure waiting area or room in each division or court within the superior, probate and family, juvenile, Boston municipal and district court departments of the trial court for victims, family members and witnesses during court proceedings, as provided by clause (i) of section three of chapter two hundred and fifty-eight B. Said chief justice for administration and management shall, subject to appropriation and to available resources, include provisions for a safe and secure waiting area or room for all new construction and renovations of court facilities in said departments" and replacing it with the following —

"The chief justice for administration and management shall provide a separate and secure waiting area or room in each courthouse that houses a division of the superior, probate and family, juvenile, Boston municipal and district court departments of the trial court for victims, family members, and witnesses, which is separate from the waiting area of the defendant or the defendant's family, friends, attorneys or witnesses, and separate from any district attorney's office. Designation of said areas shall be made in accordance with the implementation plan developed by the interagency task force as described in section XX of this act. Said chief justice for administration and management shall include provisions for a safe and secure waiting area or room for all new construction and renovations of court facilities in said departments"

Section 14. Subsection (l) of said section 3 of said chapter 258B, as so appearing, is hereby amended by striking the word "A" in line 86 and inserting, in place thereof, the following word:- "B";

Section 15. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is hereby amended by inserting, in line 88, after the word "informed", the following words:- by the prosecutor;

Section 16. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is hereby amended by inserting, at the end thereof, the following:- provided further, defense counsel may not seek to interview a victim or witness under the age of majority, incompetent, or cognitively impaired, until the victim or witness has been informed, in the presence of a parent/guardian or accompanying adult who is not the defendant, of the right to submit to or decline the interview;

Section 17. Subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby amended by striking, in line 111, the word "at" and inserting, in place thereof, the following word:- before;

Section 18. Said subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby further amended by inserting after the word "defendant", in lines 111-112, the following words:- , even if there is admission to sufficient facts, the sentence is mandatory, or there is an agreed upon plea;

Section 19. Said subsection (p) of said chapter 3 of said chapter 258B, as so appearing, is hereby further amended by inserting, at the end thereof, the following:- provided further, upon showing by the prosecutor that a personal appearance by the victim will cause an unreasonable hardship on the victim, the court shall permit the victim to exercise the right to be heard by submitting a statement through audio tape or videotape to be heard or viewed before sentence or disposition is imposed;

Section 20. Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking out

subsection (t) in its entirety and replacing it with the following new subsection:-

(t) for victims and witnesses, to be informed by the prosecutor about their notification rights and their right to receive criminal offender record information under section 178A of chapter 6. The criminal history systems board, or in the case of a juvenile defendant, the department of youth services, shall give victims and witnesses, using the most recent contact information provided by the victim or witness, reasonable advance notice of when a convicted offender receives a temporary, provisional or final release from custody or is transferred from a secure facility to a less-secure facility, or forthwith when a convicted offender escapes from custody;

Section 21. Said section 3 of said chapter 258B, as so appearing, is hereby further amended by inserting, at the end thereof, the following new subsections:-

(w) for victims and witnesses who are minor children or adults with disabilities as defined in subsection (k) of section 13 of chapter 265, as so appearing, notwithstanding any law to the contrary, to have parents, a counselor, friend or other person having a supportive relationship with the victim or witness, in addition to the victim witness advocate, remain in the courtroom during the child's or adult's testimony unless, in written findings made and entered, the court finds that the defendant's constitutional right to a fair trial will be prejudiced;

(x) for victims and witnesses who are minor children or adults with disabilities, as defined in subsection (k) of section 13 of chapter 265, as so appearing, for prosecutors to provide an orientation, as defined in this chapter, to the courtroom setting, court personnel, and rules of the court, to the extent practicable under the circumstances;

(y) for victims and witnesses, to have a summary of the rights afforded under this section conspicuously posted in all courthouses and police stations. The victim and witness assistance board, pursuant to section 4 of this chapter, shall devise and provide posters to satisfy this requirement to court officials and police station personnel, and, upon request and at the discretion of the office and board, to any other institution or organization to post and maintain in space accessible to the general public. The board shall develop the posters in a variety of languages as determined by the Massachusetts office for victim assistance. Upon request, the board will respond, to the extent possible, to any requests for additional language translations of the posters;

(z) for victims, to confer with the prosecution prior to the acceptance of a plea of guilty or admission to sufficient facts. Before the judge accepts a plea of guilty, an admission to sufficient facts, a disposition, or an agreed-upon sentence recommendation, the judge shall ask the prosecutor if the victim has been consulted regarding plea discussions, whether or not the victim agrees or disagrees with the plea discussions and agreement, if the victim was notified of the court date and is present, and if the victim would like to assert their right to offer a victim impact statement;

(aa) for victims, to be notified by the prosecutor that they have the right to provide the sex offender registry board with a written impact statement for inclusion in the convicted sex offender's classification determination pursuant to section 178K(1)(k) of chapter 6. Upon the specific request of the victim to the sex offender registry board, the sex offender registry board shall inform the victim of the sex offender's (i) registration and classification status and (ii) the addresses of where the sex offender lives, works, and attends an institution of higher learning regardless of the classification level and registration status of the offender;

(bb) for victims and witnesses, to be informed by the court at the daily commencement of the regular criminal docket at which accused persons are arraigned, that a summary of their rights is posted and the location of said posting within the courthouse;

(cc) for victims of the commission or attempted commission of violent acts, and others as deemed appropriate by the responding officer, to be notified by said officer who has determined that a crime has been committed, of their rights under this act. Unless the officer reasonably concludes that it is not practicable or safe to do so under the circumstances, he or she shall present a card prepared by the Massachusetts office for victim assistance in consultation with the victim and witness assistance board which includes, but is not limited to, a summary of their rights under this chapter, relevant referrals to victim services and, pursuant to MGL 258C, referrals for victim compensation;

Section 22. Section 6 of said chapter 258B, as so appearing, is hereby amended by striking out Section 6 in its entirety;
Section 23. Section 7 of said chapter 258B, as so appearing, is hereby amended by striking out after the words attorney and agency, in line 1, local;
Section 24. Section 8 of said chapter 258B, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words, ". The court shall impose an assessment of $50" and inserting, in place thereof, the following word:- , and;
Section 25. Said section 8 of said chapter 258B, as so appearing, is hereby further amended by striking out, in lines 21-31, the words "In the discretion of the court or the clerk magistrate in the case of a civil motor vehicle infraction that has not been heard by or brought before a justice, a civil motor vehicle assessment imposed pursuant to this section which would cause the person against whom the assessment is imposed severe financial hardship, may be reduced or waived. An assessment other than for a civil motor vehicle infraction imposed pursuant to this section may be reduced or waived only upon a written finding of fact that such payment would cause the person against whom the assessment is imposed severe financial hardship. Such a finding shall be made independently of a finding of indigency for purposes of appointing counsel" and inserting, in place thereof, the following sentence:- Any assessment made pursuant to this section shall not be subject to waiver by any court for any reason;
Section 26. Section 9 of said chapter 258B, as so appearing, is hereby amended by striking out Section 9 in its entirety;

AMENDMENT NO. 19 WITHDRAWN
Ms. L'Italien of Andover moves to amend House, No. 4703, in section 21, striking out subsection 10, and inserting in place thereof the following paragraph:

"(10) An agency providing services in a home or community-based setting for any elderly person or disabled person or who will have direct or indirect contact with such elderly or disabled persons or access to such persons' files may obtain from the department data permitted under section 172C."; and

by inserting in section 22, after the word "chapter 258B," in line 461, the following words:

"any agency providing services in a home or community-based setting for any elderly person or disabled person, or any elderly and disabled persons hiring personal care attendants or other personal caretakers under the commonwealth's personal care attendant program or other state home care program".

AMENDMENT NO. 20 REJECTED
Mr. Driscoll of Braintree amends the bill by adding the following section:
Section 98A of Chapter 41 of the General Laws as appearing in the 2006 Official Edition is amended by replacing the entire section with the following: A police officer of a city or town may stop a person or vehicle in a city or town that borders the officer's city or town if the officer has reason to believe that the person or vehicle recently traveled through his or her city or town under circumstances where the officer would have had the authority to stop the person or vehicle for the purpose of making an arrest, placing an operator in protective custody, issuing a citation or taking any other enforcement action. Said officer may return any person so arrested or placed in protective custody to the jurisdiction wherein said offence was committed or other condition or violation was observed. No criminal case shall be dismissed, and no evidence in a criminal case shall be suppressed, based on the fact that a stop of a person or motor vehicle did not comport with this section. Nothing contained in this section shall be construed as limiting the powers of a police officer to make arrests and in so far as possible this section shall be deemed to be declaratory of the common law of the commonwealth.

AMENDMENT NO. 21 REJECTED
Mr. Driscoll of Braintree amends the bill by adding the following:

There is hereby created the silver alert community response system. The system shall be used in alerting designated Massachusetts communities in cases involving missing and endangered older adults.

(a). The silver alert community response system shall:

1. 1. Be used when an adult with serious memory impairment such as Alzheimer's disease or other dementia is reported to any police department in Massachusetts as a missing person and the police department or other appropriate agency has determined that the missing person should appropriately be the subject of a silver alert..
2. 2. Direct and focus law enforcement and other key response resources in a cost-effective way in a geographic area consistent with the missing person's "Point Last Known" and in accordance with the best available research data related to activities of persons with dementia..

(b). The executive office of public safety, in conjunction with the municipal police training committee shall develop and implement the silver alert system. The Secretary shall promulgate rules and regulations, as necessary, to ensure proper implementation of the silver alert. He shall do so in consultation with representatives of the executive office of elder affairs, attorney general's office, Massachusetts emergency management agency, state police, chiefs of police association, county sheriff's departments and district attorney's offices, department of conservation and recreation (rangers), and Massachusetts/New Hampshire chapter of the national Alzheimer's association.
(c). All first responders, 911 operators and any other appropriate personnel shall be trained on the silver alert system application and protocols; re-training will be included in yearly in-service trainings for these personnel; training will include information about older drivers whose memory impairments may put them at high risk for crashes or becoming lost while driving.
(d). The executive office of public safety shall develop a plan to ensure that the Silver Alert system will include use of a localized reverse 911 emergency phone system.
(e). The executive office of public safety shall consider coordinating the silver alert system with the national MedicAlert®+Safe Return Program®, a nationwide patient identification and family support program, supported locally by the Massachusetts Alzheimer's Association.

AMENDMENT NO. 22 REJECTED
Mr. Driscoll of Braintree amends the bill by adding the following section:

Section 60 of chapter 266 of the general laws, as so appearing, is hereby amended by striking out the entire section and inserting in place thereof the following new section: -
Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to have been obtained from a person by a false pretense of carrying on business in the ordinary course of trade or whoever obtains or exerts control over property in the custody of any law enforcement agency, or any individual acting on behalf of a law enforcement agency, which is explicitly represented to him by any law enforcement officer or any individual acting on behalf of a law enforcement agency as being stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of said property shall, if the value of such property does not exceed two hundred and fifty dollars, be punished for a first offense by imprisonment in a jail or house of correction for not more than two and one half years, or by a fine of not more than one thousand dollars; or if for a second or subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be punished by imprisonment in a state prison for not more than five years, or by a fine of five thousand dollars, or by both a fine and imprisonment. It shall not be a defense that the property was obtained by means other

than through the commission of a theft offense if the property was explicitly represented to the accused as having been obtained through the commission of a theft offense.

Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following new section:-

Section 30F. Enhanced Theft – Receiving & Concealing

It is not a defense to a charge of receiving stolen property that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following new section:-

Section 30B. Theft Using Emergency Exit to Avoid Apprehension or Detection

A person commits theft by emergency exit if that person intentionally takes possession of, carries away, transfer or causes to be transferred, any merchandise displayed, held, stored or offered by sale by any store or other retail mercantile establishment with the intent of depriving the merchant of the possession, use of benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof and the person leaves a store by use of a designated emergency exit.

A violation of this Act shall be punished for a first offense by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, and for a second offense by imprisonment in the house of correction for not more than two and one half years or a fine not to exceed two thousand dollars, or by both fine and imprisonment and for subsequent offenses by imprisonment in the state prison for not more than five years, or by a fine of not more than five thousand dollars or by both such fine and imprisonment.

Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following new section:-

Section 30G. Fraudulent/Bogus Receipts & Universal Product Codes

A person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits, or reproduces a retail sales or return receipt, price ticket or a Universal Product Code Label, shall be punished for a first offense by imprisonment in the house of correction for not more than two and one half years or by a fine of not more than five hundred dollars or by both such fine and imprisonment, and for a second offense shall be punished by imprisonment in a house of corrections for not more than two and one half years or by a fine of not more than two thousand dollars or by both fine and imprisonment and subsequent offenses shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars or by both such fine and imprisonment.

A person who, with intent to cheat or defraud a retailer, possesses *fifteen (15) or more fraudulent retail sales or return receipts, price tickets, Universal Product Code Labels or possesses the device which purpose is to manufacture fraudulent retail sales receipts or Universal Product Code Labels, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars or by both such fine and imprisonment.

Chapter 266 of the General Laws, as so appearing, is hereby amended by inserting the following new section:-

Section 30H. Organized Retail Crime

Organized retail crime shall be defined as the stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means, of retail merchandise in qualities that would not normally be purchased for personal use or consumption for the purpose of reselling or otherwise reentering such retail merchandise in commerce; or the recruitment of persons to undertake, or the coordination, organization, or facilitation of, such stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means.

An Organized Retail Crime Ring is defined as three or more persons who associate for the purpose of

engaging in the conduct of organized retail crime.
In this section, "retail merchandise" means one or more items of tangible personal property displayed, held, stored, or offered for sale in a retail establishment or merchandise explicitly represented to the person as being stolen retail merchandise.
A person who is guilty of organized retail crime shall be punished by imprisonment in a state prison for a minimum term of not less than 1 year and a maximum term of not more than
10 years, if the aggregated value of the property or services involved in all crimes commitment by the individual or co-conspirators in an organized retail crime ring within the past one hundred and eighty days is at least $2,500 but less than $10,000; or (2) by imprisonment in a state prison of not less than 2 years and a maximum term of not more than 15 years, if the aggregated value of the property or services involved in all crimes commitment by the individual or co-conspirators in an organized retail crime ring within the past one hundred and eighty days is at least $10,000 or more.
For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved.
Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.
Leader of Organized Retail Crime Enterprise.
A person is a leader of an organized retail theft enterprise if he conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of shoplifted merchandise. A leader of organized retail crime may be punished by a fine of not more than $250,000 or five times the retail value of the merchandise seized at the time of the arrest, whichever is greater and/or imprisonment in state prison for not more than twenty years.

AMENDMENT NO. 23 REJECTED
Mr. Driscoll of Braintree amends the bill by adding the following section:

SECTION 1 . Chapter 278 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 6A the following section:-

Section 6B. (a) A certificate of analysis prepared under sections 39 or 41 of chapter 22C, section 24(1)(e) of chapter 90, section 13 of chapter 111, section 36 of chapter 138 or section 121A of chapter 140 shall be admissible in a criminal, delinquency or youthful offender trial as *prima facie* evidence of the matters specified in those sections without requiring live testimony subject to the following procedures:

(1) The Commonwealth, through the attorney general or district attorney, shall file with the clerk of the court in which the case is pending a notice of intent to rely on a certificate of analysis without the testimony of the analyst. The notice, which may be included in the conference report required by Rule 11 of the Massachusetts Rules of Criminal Procedure, shall identify the type of certificate that will be offered at trial, shall be filed and served prior to the pretrial hearing scheduled pursuant to said Rule 11, or at a later date by leave of the court for good cause shown, and shall include a statement that defendants who fail to comply with paragraph 2 of this section forfeit their right to demand that the Commonwealth call the analyst as a witness at trial. Where notice is not included in the conference report, a certificate of service shall be affixed to the notice.

(2) If a defendant objects to admission of the certificate without the opportunity to confront the analyst, the defendant shall file with the clerk of the court in which the case is pending and serve on the Commonwealth an objection and demand for an analyst's presence. The objection and demand shall be filed on or before the date of the pretrial hearing scheduled pursuant to Rule 11 of the Massachusetts Rules of Criminal Procedure, or at a later date by leave of the court for good cause shown, and, in all events, no later than the compliance hearing scheduled pursuant to said Rule 11. A certificate of service shall be affixed to the objection and demand.

(3) When a defendant timely files an objection and demand for an analyst's presence at trial in the manner specified in paragraph 2, the certificate of analysis shall not serve as *prima facie* evidence unless the analyst who signed the certificate testifies for the Commonwealth or the defendant waives his right to confront the analyst.

(4) A defendant who fails to timely file an objection and demand for an analyst's presence at trial in the manner specified in paragraph 2 shall forfeit the right to demand that the Commonwealth present an analyst's testimony at trial and the certificate of analysis shall be admissible as *prima facie* evidence, without requiring the Commonwealth to present live testimony from an analyst.

(b) Continuances or other delays in the case occasioned by the demand for an analyst's presence at trial shall be excluded in computing the time within which the trial of any offense must commence under Rule 36 of the Massachusetts Rules of Criminal Procedure, and, absent bad faith by the Commonwealth, shall not constitute grounds for dismissal for want of prosecution.

(c) Nothing contained in this section shall require the Commonwealth to introduce a certificate of analysis at trial or limit the Commonwealth's ability to prove matters that may be contained in a certificate of analysis by any other method of competent proof.

(d) The notice and demand requirements of this section shall not apply to pretrial or other hearings in criminal cases, or to proceedings other than criminal, delinquency or youthful offender trials. In proceedings other than criminal trials, certificates of analysis may be admitted into evidence as otherwise permitted by law.

SECTION 2. This act shall apply to all criminal cases pending on or commenced after the effective date. For cases pending on the effective date that have advanced beyond the pretrial hearing scheduled under Rule 11 of the Massachusetts Rules of Criminal Procedure, the Commonwealth may file and serve the notice specified in paragraph (a)(1) of section 6B of chapter 278 within 30 days of the effective date, or at a later date by leave of the court for good cause shown, the defendant may file and serve the objection and demand specified in paragraph (a)(2) within 30 days of the Commonwealth's service of such notice, or at a later date by leave of the court for good cause shown, and the trial shall be held no earlier than 45 days after the defendant's service of such objection and demand.

AMENDMENT NO. 24 WITHDRAWN

Mr. Alicea of Charlton moves to amend the bill in section 21, in lines 260 and 261, by inserting after the word "custody" the following:-

", and upon completion of all mandatory post-release supervision requirements;"

AMENDMENT NO. 25 WITHDRAWN

Mr. Jones of North Reading, Mr. Peterson of Grafton, Mr. Hill of Ipswich, Ms. Poirier of North Attleboro, and Mr. deMacedo of Plymouth move that House Bill 4703 be amended by striking SECTION 10, contained in lines 112 through 119, inclusive, in its entirety, and inserting in place thereof the following section:

"SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words "five hundred dollars for each willful violation thereof, after notice and hearing as provided by applicable law" and inserting in place thereof the following words:- $1,000 for a willful violation thereof, after notice and hearing as provided by applicable law, and $5,000 for any second or subsequent willful violation, after notice and hearing as provided by applicable law; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of the officer's official duties."

AMENDMENT NO. 26 ADOPTED, AS CHANGED

Mr. Jones of North Reading, Mr. Peterson of Grafton, Mr. Hill of Ipswich, Ms. Poirier of North Attleboro, and Mr. deMacedo of Plymouth move that House Bill 4703 be amended by striking SECTION 10, contained in lines 112 through 119, inclusive, in its entirety, and inserting in place thereof the

following section:
“SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words “five hundred dollars for each willful violation thereof, after notice and hearing as provided by applicable law” and inserting in place thereof the following words:- $1,000 for a knowing violation thereof, after notice and hearing as provided by applicable law, and $5,000 for any second or subsequent knowing violation, after notice and hearing as provided by applicable law; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of the officer’s official duties.”

AMENDMENT NO. 27 WITHDRAWN
Mr. Jones of North Reading, Mr. Peterson of Grafton, Mr. Hill of Ipswich, Ms. Poirier of North Attleboro, and Mr. deMacedo of Plymouth move that House Bill 4703 be amended by striking in line 339 the words “section 38R of chapter 71” and inserting in place thereof the following: section 38G ½ of chapter 71
;and further by inserting at the end thereof the following sections:
“SECTION X. Chapter 71 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting, after section 38G, the following section:-
Section 38G 1/2. State and National Criminal History Background Check for Teacher Licensure Applicants and Other School Personnel
(a) For the purposes of this section, the following words shall have the following meanings:-
"Applicant", an individual who: applies for an initial educator license, as defined in section 38G; who applies for a recertification of an educator license, as defined in section 38G, after the effective date of this act; or who applies for any full-time or part-time employment in a local school department that will expose the individual to unsupervised access to children in an educational setting.
"Department", the department of education, as defined in section 1 of chapter 15.
"Educational setting", any vehicle, building, structure, location or other area, whether public or private property, utilized for or involved in the education, training, instruction, or supervision of children by a local, regional or charter school district, or the transportation of children to, from or in connection with any such activity.
"Unbecoming behavior", an offense established in sections 13B, 13H, 13J, 22A, 23, 24B, 26A, and 27A of chapter 265 or, sections 4, 4A and 29A-29C, inclusive, of chapter 272. “State and national criminal history background check”, an investigation of the criminal record of an applicant, based on the criminal history record systems maintained by the Massachusetts state police and the Federal Bureau of Investigation and based on fingerprint identification or any other method of positive identification.
“Satisfactorily pass a state and national criminal history background check”, a situation where the results or information generated by a state and national criminal history background check of an applicant do not indicate that the applicant has been convicted of a violent crime, a sex crime other than a sex crime classified as a misdemeanor or unbecoming behavior, as defined in subsection (a), or under a similar law of another state or the United States.
(b) (1) Beginning January 1, 2011 the department, or the superintendent of a school district where an applicant seeks any employment position in an educational setting, shall conduct a state and national criminal history background check on all applicants, as defined in this section. Each applicant shall provide written consent authorizing the release of any criminal history background information to the department or superintendent, as applicable. The department or superintendent, as applicable, shall receive the results of the state and national criminal history background check and use those results to comply with subsections (c) and (d) of this section.
(2) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Massachusetts state police. The fingerprint cards shall be forwarded to the

Federal Bureau of Investigation by the Massachusetts state police after a state criminal background check is conducted. The results of the state and federal background check shall be sent to the department.
(c) (1) No superintendent shall employ, in any part-time or full-time employment position in the district, any person who fails to satisfactorily pass a state and national criminal history background check.
(2) Upon receiving a certified copy of a conviction showing that any district employee in an educational setting has been convicted of a violent crime, sex crime other than a sex crime classified as a misdemeanor or unbecoming behavior, as defined in subsection (a), or under a similar law of another state or the United States, the superintendent shall immediately discharge the district employee from his position of employment.
(3) This section shall apply to every teacher, teacher candidate, trade, vocational, temporary substitute teacher, exchange teacher, regionally-licensed or certified teacher, teaching administrative intern, and other full-time or part-time employee of any school district in an educational setting.
(d) The commissioner of education shall not issue an educator license, as defined in section 38G, or recertify any such educator license, as defined in section 38G, to any applicant, and a superintendent shall not hire an applicant for any full-time or part-time employment position in an educational setting in the district, unless and until the applicant satisfactorily passes a state and national criminal history background check.
(e) (1) All criminal history background information received by the department shall be confidential and marked as such and not further disclosed or made available for public inspection.
(2) Any reports and other information generated by state and national criminal history background checks under this section shall not be classified as public records and shall not be subject to the provisions of chapter 66.
(3) Notwithstanding subdivisions (1) and (2) of this subsection, the following actions shall not be considered violations of this section: (A) disclosing reports and other information generated by a state and national criminal background check to the applicant or his representative, to give that applicant an opportunity to question and challenge the results of that background check; (B) releasing reports and other information generated by a state and national criminal background check to a court of this commonwealth in litigation pending before that court brought by the applicant to challenge the results of the state and national criminal background check; (C) use of reports and information generated by a state and national criminal background check for the preparation, investigation, and presentation of administrative proceedings involving the denial of certification or a restriction on unsupervised access to children in an educational setting.
(4) The commissioner shall promulgate regulations for a process to appeal a decision of the department to deny certification of an applicant or to restrict unsupervised access to children in an educational setting for an applicant due to the results of a state and national criminal background check conducted according to this section.
(f) The fee for the state and national criminal background check shall be paid by the applicant and shall not be greater than the actual cost of processing the request and conducting the state and national criminal background check. The fee may be included in the cost of the teacher licensure application charged by the department.
(g) A school committee shall report to the department when any teacher, employee or administrator in its district is discharged under subdivision (2) or resigns from employment after a charge is filed with the school board for unbecoming behavior, or after charges are filed that are grounds for discharge under section subsection (a) or when a teacher, employee or administrator is suspended or resigns while an investigation is pending for unbecoming behavior under subsection (a). The report must be made to the department within 10 days of the discharge, suspension, or resignation has occurred. In the case of a teacher, upon receiving such

a report the department shall immediately revoke the individual's license to teach.
SECTION X. Section 38G of chapter 71, as so appearing, is amended by inserting in line 58, after the word "application" the following :- and satisfactory completion of the state and national criminal history background check, as established in section 38G1/2.
SECTION X. Said section 38G of chapter 71 as so appearing, is amended by striking out, in lines 71 and 72, the words "(3) be of sound moral character" and inserting in place thereof the following:-(3) pass a state and national criminal history background check as established by section 38G1/2".
SECTION X. Said section 38G of chapter 71, as so appearing, is amended by striking out, in line 155, the words "(4) is of sound moral character" and inserting in place thereof the following:- (4) pass a state and national criminal history background check, as established by section 38G1/2.
SECTION X. Said section 38G of chapter 71, as so appearing, is amended by inserting, in line 205, after the word "responsibilities" the following:-, including the fee for the national and state criminal history background check as established in section 38G1/2 of this chapter.
SECTION X. Said section 38G of chapter 71, as so appearing, is amended by inserting in line 221, after the words "employment" the following:- and has satisfactorily completed state and national criminal history background checks.
SECTION X. Section 38R of chapter 71 is repealed."

AMENDMENT NO. 28 WITHDRAWN
Mr. Bradley of Hingham moves to amend the bill by adding the following section

SECTION ___ :

Said section 167 of said chapter 6, as so appearing is further amended by striking out the definition of "Requestor" and inserting after "Purge" the following definition:

"Requestor", a person or the person's legally designated representative, other than a criminal justice agency, submitting a request for criminal offender record information to the department.

In Section 167A, strike subsection (e) and insert the following:

(e) The department may promulgate rules and regulations for: (i) the implementation, administration and enforcement of this section; (ii) the control, installation and operation of the public safety information system accessed and utilized by criminal justice agencies; and the collection, storage, access, dissemination, content, organization and use of criminal offender record information originating from the department.

In Section 168 of chapter 6, on line 160 after "to", delete "all" and insert "any" and on line 161 after the word "information" insert "originating from the department"

In line 172 after "duties" delete the sentence "The board may at any time refer a complaint for criminal prosecution under section 178 of this chapter."

In Section 171A on line 214 after the word "possession" delete "whether obtained from the department or any other source".

On line 217 after the word "possession" delete "whether obtained from the department or any other source".

In Section 172 on line 243 after the word “obtain” delete the word “all” and add the word “any” and after the word “information” add “originating from the department”

On line 245 after the word “obtain” delete “all” and add “any” and on line 246 after the word “information” add “originating from the department”.

On line 247 after the word “obtain” delete “all” and add “any”. On line 248 after the word “information” add “originating from the department”.

On line 253 after the word “Requestor” delete “or their legally designated representatives” and on line 254 after the word “information” add “from the department”.

On line 280 after the word “obtain” delete “all” and add “any”, and after the word “information” add “originating from the department”.

On line 370 after the word “department” delete the sentence “The department may establish rules or regulations imposing other requirements or affirmative obligations upon requestors as a condition of obtaining access to the database.”

On line 442 after the word “obtains” add the word “any”, and after the word “information” delete “from any source” and add “originating from the department”.

On line 446 after the word “records” add “which are accessible to the general public”.

On line 447 after the word “records” delete “compiled chronologically” and after “(2)” delete “chronologically maintained”.

On line 521 delete the word “all” and add “any” and on line 522 after the word “information” add originating from the department”.

In Section 178 on line 540 after the word “information” add “from the department”.

AMENDMENT NO. 29 WITHDRAWN
Mr. Linsky of Natick moves to amend H4703 by inserting after Section 128 the following new section:-

SECTION X. Section 128A of chapter 140 of the General Laws, as so appearing, is hereby amended by adding the following two sentences:-

Any sale or transfer conducted under this section shall comply with section 131E and shall take place at the location of a dealer licensed under section 122, who shall transmit the information required by this section for the purchases and sales by utilizing the electronic verification link established by the executive director of the criminal history systems board. A licensed dealer may charge the seller a fee not to exceed $25 for each sale or transfer electronically submitted on behalf of the seller to the criminal history systems board.

AMENDMENT NO. 30 WITHDRAWN
Mr. Linsky of Natick moves to amend H 4703 by inserting after Section 128 the following new section:-

SECTION X. Chapter 265 of the General Laws, as so appearing, is hereby amended by inserting after section 18C the following section:-

Section 18D. Whoever, while in the commission or attempted commission of a misdemeanor that has as an element the use, attempted use, or threatened use of physical force against the person of another, has in his possession or under his control a firearm, rifle, or shotgun, shall, in addition to the penalty for such offense, be punished by imprisonment in the state prison for not more than 10 years, or in the house of correction for not more than 2 ½ years, or by a fine of not more than $5,000, or by both such fine and imprisonment.

AMENDMENT NO. 31 WITHDRAWN
Representative Koutoujian of Waltham hereby amends Section 21 of H 4703

By inserting at the end of Section 172(a)(3) of Chapter 6 the following:
Notwithstanding the foregoing, the time period restrictions set forth in (i) and (ii) above shall not apply to requestors that are prohibited by statute, regulation or accreditation requirement from employing or otherwise affiliating with persons who have been convicted of one or more categories of criminal offenses regardless of the passage of time since such conviction.

AMENDMENT NO. 32 WITHDRAWN
Representative Martin Walsh moves that the bill be amended in Section 69(20C), in line 734 by the addition of the following:
"Provided further that the Sheriff's Office in the county where the court that committed the detainee is sitting may prescribe a program administrative fee to be paid by each sentenced inmate or pre-trial detainee participating in this program that shall be determined according to his or her ability to pay, finances, household income, number of dependents and medical status. The inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. For those deemed unable to pay, the Sheriff's Office will agree to cover the cost for those participants at a reduced and agreed upon rate with the electronic monitoring agency or entity."

AMENDMENT NO. 33 WITHDRAWN
Ms. Sandlin of Agawam moves to amend H 4703 in section 69 in lines 727 – 758 by striking out Section 20C in its entirety.

AMENDMENT NO. 34 WITHDRAWN
Mr. Webster of Pembroke moves to amend the bill by striking out section 69.

AMENDMENT NO. 35 ADOPTED
Mr. McCarthy of East Bridgewater and Mr. Koutoujian of Waltham move to amend H4703 by inserting after section 65 the following new section:

Section 14 of chapter 123A of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences: The district attorney or the attorney general at the request of the district attorney may petition the court for a trial. In any trial held pursuant to this section, either the person named in the petition or the petitioning party may demand in writing that the case be tried to a jury, and upon such demand the case shall be tried to a jury.

AMENDMENT NO. 36 WITHDRAWN
Ms. Coakley-Rivera of Springfield moves to amend House Bill 4703, in section 69, by striking out section 20C, in lines 727 through 758.

AMENDMENT NO. 37 WITHDRAWN
Representative Hecht of Watertown moves to amend H4703 by inserting at the end thereof the following

new section:-
SECTION XX. Chapter 6 of the General Laws, as so appearing in the 2006 Official Edition, is hereby amended by inserting at the end of Section 172B the following new section:-
"Section 172B1/2. Municipalities in the Commonwealth may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to Sections 168 and 172 of Chapter 6 of the General Laws and 28 U.S.C. §534. Fingerprint submissions hereunder are authorized to be submitted by the licensing authority to the State Police Identification Unit through the Criminal History Systems Board for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.
Municipalities may by local ordinance establish the appropriate fee charged to applicants for administering such a fingerprinting system. For purposes pursuant to Section 2LLL of Chapter 29 of the General Laws, $30 of said fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund; and the remainder of said fee may be retained by the licensing authority for costs associated with the administration of the system."

AMENDMENT NO. 38 WITHDRAWN
Representative Hecht of Watertown moves to amend H4703 in Section 69, line 716 by deleting the word "shall" and inserting in place thereof:- "may"

AMENDMENT NO. 39 WITHDRAWN
Mr. Canessa of New Bedford moves to amend the bill by adding the following section:
SECTION XX. Section 32B of Chapter 268 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection:-
(d) Whoever violates this section shall be punished by imprisonment in a jail of house of correction for not more than 2 and ½ years or a fine of not more than $500, or both; provided, however, that whoever violates this section, where the violation results in injury to the police officer, shall be punished by imprisonment in a jail or house of correction for not more than 2 and ½ years and a fine of not more than $1,000, or by imprisonment in the state prison for not more than 10 years.

AMENDMENT NO. 40 WITHDRAWN
Mr. Koutoujian of Waltham and Mr. deMacedo of Plymouth move to amend H4703 by inserting after section 64 the following new sections:

SECTION 1. Chapter 119 of the General Laws is amended by inserting the following section after Section 26A as Section 26B; Chapter 208 of the General Laws is amended by inserting the following section as Section 31B after Section 31A; Chapter 209 of the General Laws is amended by inserting the following section after Section 38 as Section 38A; Chapter 209C of the General Laws is amended to insert the following section after Section 10 as Section 10A:-
Conviction of a parent for murder of a child's other parent. In issuing any judgment or temporary order of visitation or custody, the conviction by a court of competent jurisdiction of the parent of a child for murder in the first or second degree of the child's other parent, or conviction for aiding, abetting, attempting, conspiring or soliciting to commit murder in the first or second degree of the child's other parent, or a comparable crime against the other parent under federal law or the law of any other state, shall create a rebuttable presumption that contact with the child and exercise of parental rights, including but not limited to care and custody of the child, by the convicted parent are not in the child's best interests. This rebuttable presumption may be overcome only if the court determines that:
(i) the child is competent to signify his or her assent and has assented to an order of the court permitting contact between the convicted parent and the child or exercise of parental rights by the convicted parent; or

(ii) the crime occurred in the context of past physical, sexual or psychological abuse committed by the other parent against the convicted parent as set forth section 23F of chapter 233, and contact between the child and convicted parent or award of custody, visitation or other rights to the convicted parent is in the child's best interests. If the court determines that the convicted parent has overcome the rebuttable presumption, it shall enter written findings of fact in support of such a determination. This rebuttable presumption applies whether or not the convicted parent has exhausted any right to appeal the conviction, and notwithstanding any order of a court entered prior to the conviction that awarded the convicted parent custody, visitation or other rights related to the child.
Except as authorized and ordered by a court under this section, no person who is a party in any action before the court concerning custody or visitation, shall permit contact with the convicted parent in the presence of the child and no person shall visit, telephone, write to, or otherwise communicate with the convicted parent in the child's presence or deliver messages or other communications between the child and the convicted parent.

SECTION 2. Section 26 of chapter 119 of the General Laws is hereby amended by deleting the period at the end of the last sentence in subsection (4) and adding the following:- ; or (iii) the court hearing the petition finds that the parent of the child was convicted by a court of competent jurisdiction of murder in the first or second degree of the child's other parent, or for aiding, abetting, attempting, conspiring or soliciting to commit murder in the first or second degree of the child's other parent, or a crime against the other parent under federal law or the law of any
other state that is comparable to those crimes, and (a) there has been no finding by a court that the crime occurred in the context of past physical, sexual or psychological abuse committed by the other parent against the convicted parent as set forth section 23F of chapter 233; and (b) the child, if competent to signify his assent, has not assented to an order to dispense with the need for consent by the convicted parent to adoption of the child.

SECTION 3. Section 3 of chapter 210 of the General Laws is hereby amended by deleting the period at the end of the sentence that appears before the last sentence of subsection (c) and inserting the following:- ; (iii) the court hearing the petition finds that the parent of the child was convicted of murder by a court of competent jurisdiction in the first or second degree of the child's other parent, or for aiding, abetting, attempting, conspiring or soliciting to commit murder in the first or second degree of the child's other parent, or a crime against the other parent under
federal law or the law of any other state that is comparable to those crimes, and (a) there has been no finding by a court that the crime occurred in the context of past physical, sexual or psychological abuse committed by the other parent against the convicted parent as set forth section 23F of chapter 233; and (b) the child, if competent to signify his assent, has not assented to an order to dispense with the need for consent by the convicted parent to adoption of the child.

AMENDMENT NO. 41 WITHDRAWN
Representative Speliotis of Danvers moves to amend the bill by adding the following new section:
SECTION 1. Chapter 6 of the General Laws, as so appearing in the 2006 Official Edition, is hereby amended by inserting at the end thereof the following new section:-
"Section 178B1/2. Municipalities in the Commonwealth may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to Sections 168 and 172 of Chapter 6 of the General Laws and 28 U.S.C. §534. Fingerprint submissions hereunder are authorized to be submitted by the licensing authority to the State Police Identification Unit through the Criminal History Systems Board for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.
Municipalities may by local ordinance establish the appropriate fee charged to applicants for administering such a fingerprinting system. For purposes pursuant to Section 2LLL of Chapter 29 of the

General Laws, $30 of said fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund; and the remainder of said fee may be retained by the licensing authority for costs associated with the administration of the system."

AMENDMENT NO. 42 WITHDRAWN

Ms. Grant of Beverly moves to amend the bill by adding the following section:

Section XXX. SECTION 1. Chapter 6A of the General Laws, as appearing in the 2008 Official Edition, is
hereby amended by striking out section 18 and inserting in place thereof the following section:-
Section 18. The following state agencies are hereby declared to be within the executive office of public safety and security: the department of public safety; the department of fire services; the office of grants and research and the highway safety division; the municipal police training committee; the criminal history systems board; the state 911 department; the department of state police; the office of the chief medical examiner; the Massachusetts emergency management agency; the military department; the department of correction; the department of community supervision; the parole board; the sex offender registry board; and all other agencies and boards within these departments, committees, and boards.
SECTION 2. Section 18½ of chapter 6A of the General Laws, as so appearing, is hereby amended by striking out, in line 18, the word "including", and inserting in place thereof the following words:- the department of community supervision.
SECTION 3. Sections 4, 5 and 7 of chapter 27 are hereby repealed.
SECTION 4. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby amended by striking out subsections (g) to (p), inclusive, and inserting in place thereof the following subsections:-
(g) "custody", physical or constructive control of an inmate in a state or county correctional facility;
(h) "department", the department of correction;
(i) "gainful employment", employment within or without any correctional facility including but not limited to labor for the operation and maintenance of any correctional facility;
(j) "inmate", a committed offender or such other person as is placed in custody in a correctional facility in accordance with law;
(k) "institution", facility;
(l) "penal institution", correctional facility;
(m) "prison", correctional facility;
(n) "prisoner", a committed offender and such other person as is placed in custody in a correctional facility in accordance with law;
(o) "state correctional facility", any correctional facility owned, operated, administered or subject to the control of the department of correction, including but not limited to: Massachusetts Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk; Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution, Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional Institution, Plymouth; Massachusetts Correctional Institution, Warwick; Massachusetts Correctional Institution, Monroe;
(p) "state prison", a state correctional facility; a sentence to "state prison" or "the state prison" otherwise provided by law shall be executed in any state correctional facility in the commonwealth;
(q) "superintendent", the chief administrative officer of a state correctional facility.
SECTION 5. Section 1 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the words "of the department of correction", and inserting in place thereof the following words:- appointed by the governor under section 1 of chapter 127A.

SECTION 6. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 20A the following section:-

Section 20B. The sheriff of any county may establish a day reporting program under which persons sentenced to the house of correction, except a sex offender as defined in section 178C of chapter 6, may be classified to constructive confinement. Such program shall include electronic monitoring of prisoners classified to the day reporting program. Placement of an individual in a day reporting program shall require victim notification as required under section 3(t) of chapter 258B. Any inmate sentenced to such program shall agree in writing to conditions set by the sheriff, who shall retain the right to revoke or alter such classification at will.

No prisoner shall be classified to a day reporting program under this section until he has served the longest mandatory minimum sentence for any offense for which the prisoner has been committed to the house of correction.

A prisoner classified to the day reporting program as set forth in this section and who abides by the conditions of the classification shall be credited time toward the serving of his sentence in the same manner as though he had served such time within the facility.

SECTION 7. Section 21 of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the word “correction”, in line 3, the following words:- to physical or constructive confinement,.

SECTION 8. Section 36 of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the words “parole board”, in line 5, the following words:- a community supervision officer.

SECTION 9. Section 49 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “eligible for parole”, and inserting in place thereof the following words:- eligible for a parole hearing.

SECTION 10. Section 49A of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 4 and in line 31, the words “exclusive of parole”, and inserting in place thereof the following words:- exclusive of persons under community supervision.

SECTION 11. Section 83E of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in lines 5-6, the word “parole”, and inserting in place thereof the following words:- community supervision.

SECTION 12. Section 86F of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 63, the word “parole”, and inserting in place thereof the following words:- community supervision.

SECTION 13. Section 87 of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the words “probation officer or parole officer of the United States or of the commonwealth”, in lines 6-7, the following words:- community supervision officer.

SECTION 14. Section 90A of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 29, the words “release on parole”, and inserting in place thereof the following words:- release to community supervision.

SECTION 15. Section 97 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 9, the words “law governing parole”, and inserting in place thereof the following words:- law governing release to community supervision.

SECTION 16. Section 97A of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 10, the word “parole”, and inserting in place thereof the following words:- release to community supervision.

SECTION 17. Chapter 127 of the General Laws is hereby amended by striking out section 127 and inserting in place thereof the following section:-

Section 127. The governor, upon the written recommendation of the commissioner of the department of correction may appoint any employee of the department, a special state police officer for a term of 3 years, unless sooner removed. Officers so appointed may serve warrants issued by the governor, the commissioner of the department of correction and orders of removal

or transfer of prisoners issued by the commissioner and warrants issued by any court or trial justice in the commonwealth for the arrest of a person charged with the crime of escape or attempt to escape from a penal institution or from the custody of an officer while being conveyed to or from any such institution, and may perform police duty about the premises of penal institutions. Such special state police officers of the investigative and fugitive apprehension unit of the department of correction may also perform police duties:

(1) when on official duty as a special state police officer of the investigative and fugitive apprehension unit, and in the company of an on-duty police officer or state police officer during the course of such police officer's official duties;

(2) to serve arrest warrants or escape warrants issued by any court in the commonwealth for the arrest of any person charged with any crime; and

(3) when arresting escapees pursuant to arrest warrants or transporting escapees, over individuals who attempt or threaten to interfere with special state police officers of the investigative and fugitive apprehension unit in the performance of their duties.

SECTION 18. Section 128 of chapter 127 is hereby repealed.

SECTION 19. Chapter 127 of the General Laws, as so appearing, is hereby by amended by striking out section 129C and inserting in place thereof the following section:-

Section 129C. For the satisfactory conduct of a prisoner confined in a prison camp, the commissioner may grant a deduction of sentence of not more than 2½ days for each month while confined in a prison camp. Such deduction of sentence shall be used in computing the minimum term of sentence for release on community supervision as authorized under chapters 127 and 127A or for reducing the term of imprisonment by deduction from the maximum term for which he may be held under his sentence or sentences. A prisoner whose term of imprisonment is reduced shall receive from the commissioner a certificate of discharge on the date which has been determined by such additional deduction from the maximum term of his sentence or sentences.

SECTION 20. Section 129D of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in lines 25-26 , the words "parole eligibility", and inserting in place thereof the following words:- eligibility for release under community supervision.

SECTION 21. Sections 130, 130A, 131, 131A, 133, 133A, 133B, 133C, 133D, 133D½, 133E and 134 of chapter 127 are hereby repealed.

SECTION 22. Section 135 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 13, the words "probation reports", and inserting in place thereof the following words:- reports of designated court personnel or the department of community supervision.

SECTION 23. Section 135 of chapter 127 of the General Laws, as so appearing, is hereby further amended by striking out, in line 15, the words "and of all probation officers."

SECTION 24. Section 135 of chapter 127 of the General Laws, as so appearing, is hereby further amended by striking out, in line 24, the word "parole", and inserting in place thereof the following words:- release on community supervision.

SECTION 25. Chapter 127 of the General Laws is hereby amended by striking out section 136 and inserting in place thereof the following section:-

Section 136. No application for release on community supervision of a prisoner made by him or on his behalf shall be entertained by the parole board, but such a release of a prisoner by the board shall be solely on its own initiative. In every case where a prisoner is serving a sentence for a felony, except for those prisoners serving a sentence for any offense from the superior court for a term of 1 year or less or from the district court for a term of 1 year to a jail or house of correction, the parole board shall, within 60 days before such prisoner first becomes eligible for community supervision, grant such prisoner a hearing before the board and shall consider carefully and thoroughly the question whether a community supervision permit should be granted to such prisoner. Prisoners entitled to such a hearing shall, so far as reasonably

practicable, be granted a hearing in the order in which they respectively become eligible for community supervision. At least 90 days prior to the time a prisoner serving sentence for a felony first becomes eligible for community supervision, the commissioner shall submit to the parole board or to an officer designated by it, all information with regard to such prisoner not already so submitted. Such information shall include, in addition to any other pertinent information:

(a) a report from the warden or superintendent of each prison in which such prisoner has been confined as to the prisoner's conduct in prison, with a detailed statement as to all infractions of prison rules and discipline, all punishments meted out to such prisoner, and the circumstances connected therewith, as well as a report from each such warden or superintendent as to the extent to which such prisoner has responded to the efforts made in prison to improve his mental and moral condition, with a statement as to the prisoner's attitude toward society, toward the judge who sentenced him, toward the district attorney who convicted him, toward the policeman who arrested him, and how the prisoner then regards the crime for which he is in prison and his previous criminal career;

(b) a report giving the prisoner's industrial record while in prison, the nature of his occupations while in prison, and a recommendation as to the kind of work he is best fitted to perform and at which he is most likely to succeed when he leaves prison;

(c) a report of such physical, mental and psychiatric examinations as have been made of the prisoner which so far as practicable shall have been made within 2 months of the time of his eligibility for parole. The parole board shall reach its own conclusions as to the desirability of granting such prisoner a community supervision permit.

For those prisoners serving a sentence in a jail or house of correction, and for those prisoners serving a Massachusetts sentence in a correctional institution of another state, hearings shall be granted in accordance with this chapter, chapter 127B and chapter 127C.

SECTION 26. Section 146 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 15, the word "parole", and inserting in place thereof the following words:- the parole board.

SECTION 27. Sections 148, 149, 149A, 151A, 151B, 151C, 151D, 151E, 151F, 151G, 151H, 151I, 151J, 151K, 151L, 151M, 151N, 152, 153, 154, 155, 156, 157, 158, 160, 161, 166, 167, 168 and 169 of chapter 127 are hereby repealed.

SECTION 28. The General Laws are hereby amended by inserting after chapter 127 the following chapters:-

CHAPTER 127A

PAROLE BOARD

Section 1. There shall be a parole board, under the supervision and control of a chair of the board. The board shall consist of 7 members, to be appointed by the governor, with the advice and consent of the council, for terms of 5 years. The governor shall designate the chair who shall serve at the pleasure of the governor and may be removed by the governor at any time. Any person appointed as chair shall at the time of his appointment, have had at least 5 years of experience in corrections, including community corrections, and have an established record of high character and qualities of leadership. The chair shall be the executive and administrative head of the board and shall have the authority and responsibility of directing assignments of members of the board and shall be the appointing and removing authority for members of the parole staff. In the case of the absence or disability of the chair, the governor may designate 1 of the members to act as the chair during such absence or disability.

Whenever a vacancy occurs in the membership of the board the governor may appoint a panel of 5 persons consisting of the administrative justice for the superior court department, the president of the state parole officers association, or its successor association, the chair of the advisory committee on correction, the president of the Massachusetts bar association or his designee, and the secretary of the executive office of public safety and security who shall serve

as chair of the panel. The panel shall submit to the governor, within 60 days of the establishment of the panel, a list of not less than 6 or more than 9 persons, or not more than 12 persons in the event there should be 2 or more vacancies to fill, who are qualified by knowledge, education or experience in the administration of criminal justice or in the behavioral sciences as hereinafter provided. Such persons shall be graduates of an accredited 4-year college or university and shall have had at least 5 years of training and experience in 1 or more of the following fields: parole, probation, corrections-- including community corrections and alternative sentencing-- law, law enforcement, psychology, psychiatry, sociology and social work; provided, however, that the panel may, by unanimous vote, submit the name of a person who has demonstrated exceptional qualifications and aptitude for carrying out the duties required of a parole board member, if such person substantially, although not precisely, meets the above qualifications. The list of names of such persons for each vacancy shall include 1 or more of the following, insofar as it is possible to select such persons who are willing and able to fill promptly the existing vacancy or vacancies: an attorney admitted to practice in Massachusetts, a psychiatrist who is a member in good standing with the American Psychiatric Association, a psychologist certified by the Massachusetts Board of Certification in Psychology, Inc., and a member of the Massachusetts parole staff. If the governor does not appoint a panel as aforesaid any vacancy on the board shall be filled by the appointment of a member who possesses the qualifications as provided above.

The positions of chair and each of the other members shall be classified in accordance with section 45 of chapter 30 and the salaries shall be determined in accordance with section 46C of chapter 30. Members shall devote full time to their duties, and no member shall hold any other salaried public office or engage in any activity which is in violation of any law or which interferes or conflicts with his full time service as a member during his incumbency.

Section 2. The parole board shall: (a) within its jurisdiction, as defined in section 4, determine which prisoners in the correctional institutions of the commonwealth or in jails or houses of correction may be released to community supervision, and when and under what conditions, and the power within such jurisdiction to grant a community supervision permit to any prisoner, and to revoke, revise, alter or amend the same, and the terms and conditions on which it was granted shall remain in the parole board until the expiration of the maximum term of the sentence or sentences for the service of which such prisoner was committed, or until the date which has been determined by deductions from the maximum term of his sentence or sentences for good conduct, or unless otherwise terminated;

(b) be the advisory board of pardons with the power and duties as set forth in section 19;

(c) make rules relative to the performance of its duties, the calling and conduct of meetings and for the conduct of its employees in the performance of their duties;

(d) ensure such rules are available to the public;

(e) make an annual report to each justice of the superior, municipal and district courts, each sheriff, the commissioner of the department of community supervision and to the commissioner of the department of correction;

(f) employ, subject to appropriation and the requirements of chapter 30 and chapter 31, such support staff, hearing officers, clerks, attorneys and other employees and consultants as the work of the parole board may require.

Any 3 members of the board may be appointed by the chair to act as the parole board for the purpose of granting or revoking of community supervision; provided, however, that for the purpose of considering hearing officer recommendations to the board under paragraph (b) of section 13, any single member of the board may be so appointed. The chair may also designate any member to act in his absence as the executive and administrative head of the board.

Section 3. (a) Retired members of the parole board and retired judges of the commonwealth whose names have been placed on the list of special parole board members pursuant to paragraph (d) may be designated by the secretary of the executive office of public safety and

security, upon application by the chair of the parole board as provided in paragraph (e), to perform such of the duties of parole board members as they are assigned by the chair of the parole board and which they may be willing to undertake.
(b) In performing such services, a special member of the parole board shall exercise all powers and authority of the office with respect to matters to which he is assigned. Any decision or vote of any such member shall be equal to any decision or vote of any active member of the parole board.
(c) A special member of the parole board shall receive compensation equivalent to that received by active members of the parole board and payment of any pension or retirement benefits shall be deemed to have been waived during such service as provided by section 90B of chapter 32. Such special member of the parole board shall be reimbursed for all expenses incurred while performing such services. While so serving, such staff support, clerical assistance and facilities as are customarily available to active members of the parole board shall be provided.
(d) Any retired member of the parole board or any retired judge who is eligible as hereinafter provided, may notify the secretary that he wishes his name to be placed on the list of such persons who may be designated as a special member of the parole board. The secretary may place the name of any retired member of the parole board or any retired judge on the list of special parole board members. No retired judge shall be designated to serve as a special member of the parole board if he is designated and assigned pursuant to section 24 of chapter 211, section 16 of chapter 211A, and section 14 of chapters 211 and 211B, nor shall any such judge consider the eligibility for community supervision, commutation or pardon of any inmate who has ever appeared before him in his judicial capacity.
(e) Application for designation of a special member of the parole board shall be made by the chair of the parole board to the secretary by a certification by the chair that: (1) a significant number of cases is pending and has been pending for a least 30 days and that the active members of the parole board could not dispose of these cases within 60 days or (2) a case exists which creates a conflict of interest to the extent that the sitting member(s) of the board cannot render a fair and impartial decision. The secretary shall consult with the chair regarding the number of special members of the parole board to be designated and the length of time such designation shall remain in effect; provided, however, that no more than 3 temporary appointments to the parole board shall be in effect at the same time; and provided, further, that at no time shall more than 1 temporary appointment serve as a member of the parole board to dispose of any particular case. In no event may a designation remain in effect for longer than 1 year; provided, however, that the secretary may redesignate an individual as a special parole board member. Any designation may specify that a special member may serve on a less than full time basis.
(f) Upon recommendation of the chair, the secretary may withdraw an individual's designation as a special parole board member at any time.
(g) Whenever the secretary has designated 1 or more special members of the parole board for the reason of a significant number of cases is pending, the chair shall file with the secretary a monthly report on the efforts to address the caseload and shall indicate the number of pending cases.
Section 4. Subject to other provisions of law, community supervision permits, in this chapter also referred to as permits to be at liberty, may be granted by the parole board to prisoners in state and county correctional institutions serving sentences or total aggregate sentences of 60 days or more; serving sentences suspended in part under sections 1 or 1A of chapter 279; serving any sentence of imprisonment imposed under chapter 279, having a committed portion of 60 days or more; subject to lifetime community supervision under section 13 of chapter 127B; subject to mandatory post-release supervision under chapter 127C; or subject to a governor's pardon or commutation under section 17.
Section 5. No prisoner shall be granted a community supervision permit merely as a reward for

good conduct. Permits shall only be granted if the parole board is of the opinion that there is a reasonable probability that, if such prisoner is released, in light of appropriate conditions and community supervision, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society. In making this determination, the board shall consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs, and demonstrated good behavior. The board shall also consider whether risk reduction programs made available through collaboration with criminal justice agencies would minimize the probability of the prisoner re-offending once released. In making this determination, the board shall not consider the availability of post-release supervision as authorized under chapter 127C.

The record of the decision of the board shall contain a summary statement of the case indicating the reasons for the decision. The record of decision shall become a public record and shall be available to the public except for any portion of the decision containing information upon which the decision was made that the board determines is actually necessary to keep confidential to protect the security of a criminal or civil investigation, to protect anyone from physical harm or to protect the source of any information; provided, however, that it was obtained under the condition of confidentiality. All such confidential information shall be segregated from the record of decision and shall not be available to the public. Confidential information may remain secret only as long as publication may defeat the lawful purposes of this section, but no longer. In every case, the terms and conditions shall include payment of any child support due under a support order, as defined in section 1A of chapter 119A, including payment toward any arrearage of support that accrues or has accrued or compliance with any payment plan between the prisoner and the IV-D agency as set forth in chapter 119A; provided, however, that the board shall not revise, alter, amend or revoke any term or condition related to payment of child support unless the community supervision permit itself is revoked.

Section 6. The parole board shall, in releasing a prisoner on community supervision, specify in writing the terms and conditions of such community supervision, and a copy of such terms and conditions shall be given to the person under community supervision. A violation of these terms and conditions shall render the person under community supervision liable to arrest and reimprisonment.

Section 7. Not less than 24 hours prior to the effective date of any community supervision permit, the department of community supervision shall notify in writing the department of state police and the police department in the city or town to which the person under community supervision will return of the supervision, specifying the terms and conditions thereof.

Section 8. Community supervision permits may be granted by the parole board to prisoners subject to its jurisdiction at any time as the board in each case may determine; provided, however, that no prisoner sentenced to the state prison shall be eligible for such permit until such prisoner shall have served the minimum term of sentence, pursuant to section 24 of chapter 279, as such minimum term of sentence may be reduced by deductions allowed under section 129D. Where an inmate is serving 2 or more consecutive or concurrent state prison sentences, a single community supervision eligibility shall be established for all such sentences. Prisoners who are granted community supervision permits shall remain subject to the jurisdiction of the board until the expiration of the maximum term of sentence or, if a prisoner has 2 or more sentences to be served otherwise than concurrently, until the aggregate maximum term of such sentence, unless earlier terminated by the board under the provisions of section 130A. Sentences of imprisonment in the state prison shall not be suspended in whole or in part.

Section 9. Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth, except prisoners confined to the hospital at the Massachusetts Correctional Institution, Bridgewater, and except prisoners serving a life sentence for murder in the first degree, shall be eligible for release on community supervision, and the parole board shall, within 60 days before the expiration of 15 years of such sentence, conduct a public hearing before the full membership unless a member of the board is determined to be unavailable as provided in

this section. For the purposes of this section, the term unavailable shall mean that a board member has a conflict of interest to the extent that he cannot render a fair and impartial decision or that the appearance of a board member would be unduly burdensome because of illness, incapacitation or other circumstance. Whether a member is unavailable for the purposes of this section shall be determined by the chair. Board members shall appear unless the chair determines them to be unavailable. Under no circumstances shall a parole hearing proceed pursuant to this section unless a majority of the board is present at the public hearing. Unless a board member is unavailable due to a conflict of interest, any board member who was not present at the public hearing shall review the record of the public hearing and shall vote in the matter.

At least 30 days before such hearing, the board shall notify in writing the attorney general, the district attorney in whose district sentence was imposed, the chief of police or head of the organized police department of the municipality in which the crime was committed and the victims of the crime for which sentence was imposed, and the officials and victims may appear in person or be represented or make written recommendations to the board, but failure of any or all of the officials to appear or make recommendations shall not delay the paroling procedure.

After such hearing the parole board may, by a vote of a majority of its members, grant to such prisoner a community supervision permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his sentence. If such permit is not granted, the parole board shall, at least once in each ensuing 5 year period, consider carefully and thoroughly the merits of each such case on the question of releasing such prisoner on community supervision, and may, by a vote of a majority of its members, grant such community supervision permit.

Such terms and conditions may be revised, altered and amended, and may be revoked, by the parole board at any time. The violation by the holder of such permit or any of its terms or conditions, or of any law of the commonwealth, may render such permit void, and thereupon, or if such permit has been revoked, the parole board may order his arrest and his return to prison, in accordance with the provisions of sections 14, 15, and 16 of this chapter and section 16 of chapter 127B.

Section 10. In the case of every prisoner sentenced under the provisions of section 25 of chapter 279, except for those persons sentenced to a term of imprisonment as prescribed by the sentencing guidelines established by the sentencing commission, the parole board shall, within 60 days before the expiration of half of his maximum sentence, and thereafter at least once in each ensuing 2-year period, consider carefully and thoroughly the merits of such case on the question of releasing such person on community supervision. After such consideration, the parole board may grant to such prisoner a community supervision permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his sentence. Such terms and conditions may be revised, altered and amended, and may be revoked by the parole board at any time. The violation by the holder of such permit of any of its terms or conditions, or of any law of the commonwealth, shall render such permit void, and thereupon, or if such permit has been revoked, the parole board may order his arrest and his return to prison, in accordance with the provisions of sections 14, 15, and 16 of this chapter and section 16 of chapter 127B. The period which must be served before such prisoner becomes eligible for community supervision shall be calculated with deductions applicable to other sentences for good conduct.

Section 11. The family members of a deceased victim may represent the victim at any parole hearing for a prisoner serving a sentence for a crime which resulted in the death of such victim or for a crime for which a prisoner is serving a sentence for life in a correctional institution of the commonwealth, except prisoners serving a life sentence for murder in the first degree and prisoners confined to the hospital at the Massachusetts Correctional Institution, Bridgewater. For the purposes of this section, family members shall include: parent, stepparent or guardian of the victim, spouse or person with whom the victim lived and in a relationship similar to marriage, child, stepchild, grandchild, grandparent, sibling, aunt, uncle, niece, nephew and guardian of the

minor child or stepchild of the victim.
Section 12. Victims, and parents or legal guardians of minor victims, of a violent crime or a sex offense for which a sentence was imposed, who have been certified by the criminal history systems board in accordance with section 172 of chapter 6 and section 3 of chapter 258B, may testify in person at the parole hearing of the perpetrator of the crime of which they were victims, or submit written testimony to the parole board.
For the purpose of this section, "sex offense" shall have the same meaning as set forth in section 178C of chapter 6, and "violent crime" shall be defined as follows:
"Violent crime", any crime: (a) for which an individual has been sentenced to imprisonment of 1 year or more; and (b) that (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.
Section 13. (a) In the case of an inmate committed to a correctional institution of the commonwealth, no community supervision permit shall be granted by the parole board until the inmate has been seen by at least 3 members of the board, except when the chair has designated 3 members to act as the parole board under the provisions of section 2 of chapter 127A, no community supervision permit shall be granted by the board until the inmate has been seen by at least 2 of the members.
(b) In the case of an inmate committed to a jail or house of correction, the chair may designate the department of community supervision, or an employee of the parole board to make an investigation and to conduct a hearing in lieu of the board for the purpose of ascertaining the suitability of such inmate for a community supervision permit. The staff member so designated shall report his findings of fact and recommendations regarding community supervision and conditions of such supervision to the board. The board may grant or deny a community supervision permit to such inmate after considering the report and recommendations. No community supervision permit shall be granted until the inmate has been seen according to the provisions of paragraphs (a) or (b).
(c) In the case of an inmate serving a Massachusetts sentence in another state, the chair may request the paroling authority of that state or at the written request of the inmate the federal paroling authority with jurisdiction over the institution in which the inmate is housed to conduct a hearing in lieu of the Massachusetts board for the purpose of ascertaining the suitability of such inmate for a community supervision permit and to report its findings and recommendations regarding community supervision and conditions of community supervision to the board. The board may grant or deny a community supervision permit to such an inmate after considering the report and recommendations. No community supervision permit shall be granted until such inmate has been seen in accordance with the provisions of paragraphs (a) or (c).
Section14. The parole board may revoke a permit to be at liberty at any time prior to its expiration.
Section 15. The parole board may, by a majority vote of all of the members, issue to a person under community supervision, a certificate of termination of sentence, provided that in the judgment of the board such termination of sentence shall be in the public interest; and provided, further, that in no case will such certificate of termination of sentence be issued unless the person under community supervision has completed at least 1 year of satisfactory community supervision; provided, however, that the parole board, by a majority vote of all its members, may grant a certificate of termination if the person under community supervision has successfully completed the so-called special incarceration boot camp program and subsequently completed at least 4 months of satisfactory community supervision. The parole board shall furnish to the commissioner of correction and to the judge who pronounced the sentence upon the parolee a copy of such certificate of termination of sentence.
Section 16. If a permit to be at liberty has been revoked, the parole board may order the arrest of

the holder of such permit by any officer qualified to serve civil or criminal process in any county, and order the return of such holder to the prison or jail to which he was originally sentenced. A prisoner who has been so returned to prison or jail shall be detained therein according to the terms of his original sentence. In computing the period of his confinement, the time between the day of his release upon a community supervision permit and the day of issuance of a violation warrant shall be considered as part of the term of his original sentence. The time between the day after the issuance of the community supervision violation warrant until the service of the warrant shall not be considered as any part of the term of his original sentence. Service of the community supervision violation warrant shall be made effective forthwith upon arrest and imprisonment of the community supervision violator unless he is convicted of commission of a crime or found guilty of violating the conditions of federal parole or probation or another state's parole or probation, then service of the community supervision violation warrant shall not be effective until the expiration of any additional sentences ordered by the parole board or otherwise. If the community supervision violator is found not guilty of the additional crimes charged or not guilty of violating the conditions of community supervision then service of the warrant on the violator shall be made effective on the date of this issuance of the warrant and the time served by him as a result of the community supervision violation warrant lodged as a detainer shall be considered as part of the original sentence. If the disposition of the new criminal charges or charges of violation of probation, community supervision, or parole is without a finding of guilt, the parole board may retroactively serve the community supervision violation warrant. The provisions of this section shall not be deemed to preclude the board from withdrawing a community supervision violation warrant at any time. In computing the period of the violator's confinement, the time between the day after the issuance of the community supervision violation warrant until the withdrawal of the warrant shall not be considered as any part of the term of the violator's original sentence.

Section 17. In a case in which the governor is authorized by the constitution to grant a pardon, he may, with the advice and consent of the council, and upon the written petition of the petitioner, grant it, subject to any conditions, restrictions and limitations provided by the department of community supervision, as he considers proper, and he may issue his warrant to all proper officers to carry such pardon into effect. Such warrant shall be obeyed and executed instead of the sentence originally awarded.

If a sentence of death is imposed on a child under 17 years of age, and if, before he reaches the age of 17, the governor pardons such child and commits him to the care of the department of youth services, the department shall assume control over him subject to the provisions of sections 17 to 20, inclusive, of chapter 120.

Every pardon petition shall, before its presentation to the governor, be filed with the parole board, acting as the advisory board of pardons, together with all statements and signatures appended thereto, and shall thereupon become a public record. Upon receipt, the advisory board of pardons shall process each petition in accordance with the applicable provisions of section 154.

In the case of a prisoner confined under sentence for a felony, no final action or vote shall be taken on such petition until after a public hearing has been held by the council. Such hearing shall be held as soon as is practicable after the filing of the petition with the council. Any action taken by the council on the petition shall be taken by a roll call vote of the members present, recording and voting as yea or nay. The presence of a quorum and the vote of the majority of all members of the council present shall be necessary for the approval or disapproval of a petition. Within 3 days after such vote of the council, a certified copy of such roll call shall be filed with the state secretary for public inspection.

Upon approval of a petition for pardon, the governor shall direct all proper officers to seal all records relating to the offense for which the person received the pardon. Such sealed records shall not disqualify a person in any examination, appointment or application for employment or

other benefit, public or private, including, but not limited to credit or housing, licenses, nor shall such sealed record be admissible in evidence or used in any way in any court proceeding or hearing before any board, commission or other agency except in imposing a sentence in subsequent criminal proceedings or in any court proceeding or hearing in which an individual is accused of violating sections 1, 13, 13B, 13C, 13F, 13G, 13H, 14, 15, 15A, 15B, 16, 18, 18A, 18B, 22, 22A, 23, 24, 24B or 26 of chapter 265. On any application or in an interview for employment, or in any other circumstances, where a person is asked whether he has been convicted of an offense, a person who has received a pardon for such offense may answer in the negative. The attorney general and the person so pardoned may enforce the provisions of this paragraph by an action commenced in the superior court department of the trial court.

The governor, with the advice and consent of the council, may at any time revoke any pardon if he, determines that there is a misstatement of a material fact knowingly made at the time of the filing of the written petition of the petitioner, or that such pardon was procured by fraud, concealment or misrepresentation or that any provision of this section has not been complied with, and upon such revocation the governor may issue his warrant to all proper officers to take the person so pardoned into custody and return him to the institution where he was imprisoned at the time of the granting of the pardon.

Such warrant shall be obeyed and executed by the officers to whom it is issued, and the person whose pardon has been so revoked shall have the same standing in the penal institution to which he is returned as he would have had if the pardon had not been granted, except that the time during which he has been out of the penal institution upon such pardon, shall not be counted in determining the amount of his sentence remaining to be served upon such return to such institution.

The governor shall, at the end of each calendar year, transmit to the general court, by filing with the clerk of either branch, a list of pardons granted with the advice and consent of the council during such calendar year, together with action of the advisory board of pardons concerning each such pardon, and together with a list of any revocations of pardons made under this section.

The word “pardon” as used in this section shall be deemed to include any exercise of the pardoning power except a respite from sentence.

Section 18. In all cases of petitions for pardons referred to the executive council by the governor, where the petitioner is serving a sentence in the state prison, the executive secretary shall notify the attorney general, and also the district attorney who prosecuted the case. The attorney general and the prosecuting district attorney, or their representatives, may be present at the hearing on the petition by the pardon committee of the executive council, examine the petitioner’s witnesses, and present to the pardon committee full information as to the case of the commonwealth against the petitioner on which he stands convicted of the crime for which he is serving sentence.

Section 19. The parole board shall be the advisory board of pardons. The board shall, forthwith, upon receipt of a pardon petition in a case in which the petitioner is confined in a correctional institution of the commonwealth, forward a copy of such petition to the attorney general, the commissioner of correction, the chief of police of the municipality in which the crime was committed, and, if the petitioner was sentenced in the superior court, the district attorney in whose district sentence was imposed, or, if the petitioner was sentenced in a district court, the justice of the court in which sentence was imposed.

Upon receipt of all other petitions, the board shall forward a copy to the attorney general, the chief of police and the district attorney or the justice of the district court, as the case may be; provided, however, that they shall not be required to forward the copies if the petitioner was convicted of a misdemeanor and is not confined.

Within 6 weeks of the receipt of a copy of any petition, the appropriate officials may make written recommendations concerning such petition to the advisory board, but failure of any or all

of these officials to make such recommendations, shall not arrest the pardoning procedure in the case.

Within 10 weeks of the original receipt of any petition, the advisory board shall transmit the original petition to the governor, together with its conclusions and recommendations and together with such recommendations as have been received from the above officials; except that if the board shall determine that adequate consideration of the case requires a hearing on its merits by the board, the board shall not be required to submit its recommendations at the end of 10 weeks but shall notify the governor of its intention to hold a hearing; but such hearing shall be held and a report made to the governor within 6 months of the original receipt of the petition by the board. If the board shall determine that such hearing shall be held, in the case of a petitioner who is confined under sentence for a felony, the attorney general and the district attorney shall be notified of the hearing and they or their representatives given the opportunity to appear, examine the petitioner's witnesses and be heard.

If, in the opinion of the board, the facts stated in their report to the governor are such as to cause undue or unmerited hardship or injury to the petitioner or to other individuals, if made public, the portion of the report containing such facts may be submitted separately from the conclusions and recommendations, and without publicity. However, in all cases a statement containing the facts of the crime or crimes for which a pardon or commutation is sought, the sentence or sentences received, together with all conclusions and recommendations shall be made public when the report is submitted. A copy of the statement, as well as a statement of the majority recommendation of the board, signed by all members concurring, and a certified copy of the petition with all statements and signatures appended thereto, shall be retained by the board as a permanent record open to public inspection at any reasonable time for a period of 10 years from the date the original petition was filed with the board.

The board shall not review the proceedings of the trial court, and shall not consider any questions regarding the correctness, regularity or legality of such proceedings, but shall confine itself solely to matters which properly bear upon the propriety of the extension of clemency to the petitioner. The board, from time to time, may make rules relative to the calling of meetings and to the related proceedings. The board, or any members of the board, may summon witnesses and administer oaths or affirmations. The fees of witnesses before the board shall be the same as for witnesses in civil actions before the courts, and shall be paid from the appropriation for the expenses of the parole board.

Section 20. If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, the parole board shall forthwith cause him to be arrested and detained, and the warden, superintendent or keeper, respectively, of the institution in which the prisoner was confined shall receive the prisoner and cause him to be detained until the case can be examined by the governor and council; and the officer who makes the arrest shall forthwith give written notice thereof to the governor and council.

Section 21. The governor and council shall, upon receiving such notice, examine the case of the prisoner; and if it appears by his own admission or by evidence that he has violated the condition of his pardon, the governor, with the advice and consent of the council, shall order him to be remanded and confined for the unexpired term of his sentence, the confinement, if the prisoner is under any other sentence of imprisonment at the time of the order, to begin upon the expiration of such sentence. In computing the period of his confinement, the time between the conditional pardon and subsequent arrest shall not be taken to be part of the term of his sentence. If it appears to the governor and council that he has not broken the conditions of his conditional pardon, he shall be discharged.

Section 22. If a prisoner is pardoned or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doings thereon, to the secretary's office, and shall file in the office of the clerk of the court in which the person was convicted an attested copy of the warrant

and return, and the clerk shall attach a brief abstract thereof to the record of the conviction and sentence.

Section 23. No person shall, in the attempt to procure, or for the procurement of, any pardon, release to community supervision, commutation of or respite from sentence of a prisoner then confined in, or at liberty after having been confined in, any of the penal institutions of this commonwealth, or then under sentence to serve a term of imprisonment in any of the institutions, knowingly pay or offer to pay, or solicit, offer to receive or receive, either by way of gift or of reward or of compensation for services, or otherwise, except for proper legal services, any money or other thing of value, or shall transmit the same from 1 person to another; nor in such attempt or for such procurement shall any person make, or offer or promise to make, or to procure or induce the making of, any appointment to any position, whether or not in the public service.

Section 24. No person shall represent or purport to represent any prisoner then confined in, or at liberty after having been confined in, any of the penal institutions of this commonwealth or then under sentence to serve a term of imprisonment in any of the institutions, in the attempt to procure or for the procurement of any pardon, release to community supervision, commutation of or respite from sentence, unless such person shall first have filed in the office of the state secretary a written statement signed by him and made under the penalties of perjury, stating in substance that none of the provisions of section 23has been violated, that such person is acting with the written consent of the prisoner, and that such person has not received or been promised, and does not expect to receive or to be promised, any money or other reward for so acting, except fees or other reward for legal services, the amount of which fees or other reward and a detailed description of which services shall be set forth in such statement. If any person receives any additional fee or other reward for legal services different from that disclosed in the statement referred to in this section, such person shall forthwith file in the same form and manner as the original statement an additional statement setting forth the amount of such additional fees or the exact nature and extent of such reward, with a detailed description of the legal services rendered for such fee or reward. The statements shall be kept as permanent records in the office of the state secretary and shall be open to public inspection at any reasonable time.

Section 25. Whoever violates any provision of section 23 or 24 shall be punished by a fine of not more than $5,000 dollars or by imprisonment for not more than 2 years, or both.

Section 26. A copy of sections section 23 to 25, inclusive, shall be printed on the form of any petition for pardon, parole, commutation of or respite from sentence, but shall not be deemed a part of such petition.

CHAPTER 127B

DEPARTMENT OF COMMUNITY SUPERVISION

Section 1. The purpose of this chapter is to promote the accountability of the criminal justice system to the public by developing a uniform, structured, and evidence-based system for pretrial case management and for sentencing, including the supervised release to the community of criminal defendants and offenders, and without eliminating the discretionary decisions affecting sentencing, and to:

(1) Promote public safety and protection;

(2) Promote respect for the law by providing just punishment;

(3) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the person’s criminal history;

(4) Offer persons an opportunity to rehabilitate through consistent community supervision and continuity of law enforcement supervision;

(5) Reduce the recidivism among criminal persons;

Section 2. As used in this chapter, inclusive, the following words shall, unless the context clearly requires a different meaning have the following meanings:

“Board”, parole board.
“Chair”, the chair of the parole board.
“Chief justice”, the chief justice for administration and management of the trial court.
“Commissioner”, commissioner of the department of community supervision.
“Community supervision and re-entry center”, any program that is operated by a state, local or private service agency that has been deemed an appropriate intermediate sanctions program by the department of community supervision.
“Community supervision plan”, a written proposal submitted to the commissioner of the department of community supervision for approval and funding as a community supervision and re-entry center or program.
“Community supervision”, that portion of a person’s sentence served in the community subject to the supervision and jurisdiction of the department of community supervision.
“Community supervision officer”, an employee of the department of community supervision whose duties, designated by the commissioner, include supervision of presentenced and sentenced persons and monitoring of the sentence.
“Community supervision officer II”, a community supervision officer appointed as a special state police officer by the governor upon the written recommendation of the commissioner of the department of community supervision under section 7.
“Department”, the department of community supervision.
“Electronic monitoring”, monitoring of a person using an electronic person tracking system, including, but not limited to, a system using radio frequency or active or passive global positioning system technology.
“Intermediate sanctions program”, any program that has been determined to impose an appropriate sanction upon a person for whom imprisonment may not be necessary or appropriate, including but not limited to standard community supervision, intensive supervision, community service, home confinement, weekend jail sentences, day reporting, residential programming, substance abuse treatment, restitution, means-based fines, continuing education, vocational training, special education, and psychological counseling.
“Risk assessment”, the application of a risk instrument accepted for use by the department in assessing the supervision levels and recommended conditions of supervision for persons.
Section 3. There shall be a department of community supervision under the supervision and control of the commissioner of community supervision. The commissioner shall be the executive and administrative head of the department and all officers and employees of the department shall be under his supervision and control. The position of commissioner shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of chapter 30 and he shall devote his full time during business hours to the duties of his office. The secretary of public safety and security shall appoint, with the approval of the governor, the commissioner who shall serve at the pleasure of the secretary and may be removed by the secretary at any time, subject to the approval of the governor. Any person appointed to the office shall, at the time of his appointment, have had at least 5 years of administrative experience in corrections, including community corrections, and have an established record of high character and qualities of leadership.
Subject to the approval of the secretary of public safety and security the commissioner may appoint deputies, supervisors and assistants necessary for the performance of his duties. The commissioner shall establish reports and forms to be maintained by community supervision officers, procedures to be followed by community supervision officers and standards and rules community supervision, including methods and procedures of investigation, mediation, supervision, case work, record keeping, accounting, caseload and case management.
Section 4. The department of community supervision shall: (a) supervise all persons placed on community supervision by the superior, municipal or district court pursuant to: this chapter,

section 87 of chapter 276, sections 1, 1A, 5, 8 or 8A of chapter 279 or any court order or sentence to a term of community supervision; (b) supervise all prisoners released to community supervision permits granted by the parole board; (c) supervise all prisoners pardoned and released to conditions of community supervision, and report to the governor violations by any such prisoner of the conditions of community supervision applicable to his pardon; (d) supervise all persons released to mandatory post-release community supervision under chapter 127C or subject to lifetime community supervision under section 13 of chapter 127A; (e) make an annual report to each justice of the superior, municipal, and district court, each sheriff, the parole board, and the commissioner of the department of correction, which shall include all information that the commissioner considers useful, with his suggestions or recommendations.

Section 5. Subject to appropriation the commissioner may appoint, assign, transfer or remove community supervision officers to duties and responsibilities at his discretion. There shall be 2 job titles in the community supervision officer job series, community supervision officers I and II. The compensation to be paid to the community supervision officers shall be paid by the commonwealth according to schedules established in chapter 30 or in a provision of the applicable collective bargaining unit.

The commissioner shall develop and conduct basic orientation and in-service training programs for community supervision officers, such programs to be held at such times and for such periods as he shall determine.

The community supervision officers shall perform such duties and responsibilities as the commissioner may assign them. Community supervision officer I duties shall include assistance to the court as directed by the commissioner, supervision of persons placed on pretrial community supervision under section 87 of chapter 276, sentenced to administrative community supervision or determined by the department of community supervision as requiring lower levels of supervision, and any such other duties as assigned by the commissioner, subject to the provisions of chapter 150E. Community supervision officers II shall be special state police officers whose duties shall include supervision of persons assessed by the department of community supervision as requiring higher levels of supervision, all duties of a community supervision officer I, and any such other duties as assigned by the commissioner, subject to the provisions of chapter 150E.

In addition to the other duties imposed upon him, each community supervision officer so assigned by the commissioner shall inquire into the nature of a criminal case brought before the superior, municipal or district court, and inform the court, so far as is possible, whether the defendant has previously been convicted of a crime and in the case of a criminal prosecution before the court charging a person with an offense punishable by imprisonment for more than 1 year the community supervision officer shall in any event present to the court such information as the commissioner has in his possession relative to prior criminal prosecutions, if any, of such person and to the disposition of each such prosecution, and all other available information relative thereto before disposition of the case against him by sentence, or placing on file or supervision. Community supervision officers shall have access to all criminal offender record information, juvenile records, the statewide domestic violence record keeping system and any other court records necessary for the performance of their official duties.

Such record of the community supervision officer presented to the court shall not contain as part thereof any information of prior criminal prosecutions, if any, of the defendant wherein the defendant was found not guilty by the court or jury in the prior criminal prosecution. Prior to the aforesaid disposition such record of the community supervision officer shall be made available to the defendant and his counsel for inspection. When it comes to the knowledge of a community supervision officer that the defendant in a criminal case before the court is charged with an offense punishable by imprisonment is then on probation in the juvenile court or serving a term of community supervision pursuant to a court order or sentence, release by the parole board, or mandatory post-release supervision, such community supervision officer shall

forthwith certify the fact of the presence of the defendant before such juvenile court, department of community supervision, or the parole authorities granting or issuing such release.
The community supervision officer may recommend to the court that any person convicted be placed under the supervision of the department. Each community supervision officer shall keep full records of all his duties performed, cases assigned, including records of investigations and supervision.
The community supervision officer so assigned by the commissioner shall file with the superior, municipal or district court a pre-sentence investigation report which shall be made available to the parties no less than 7 days prior to sentencing. When appropriate, the community supervision officer shall also complete a risk-needs assessment using the tools adopted by the department to formulate a recommended supervision level.
The community supervision officers designated by the commissioner shall, in accordance with the rules and regulations of the department, supervise, counsel and advise persons ordered or sentenced by the court to a term of community supervision or released on community supervision from the correctional institutions of the commonwealth, or from any institution to which they were removed therefrom, and shall assist them in securing employment. They shall also render assistance and counsel to discharged prisoners who are in need of such help, and perform such other duties relative to their sentence, discharge or release as the court or the parole board requires.
The community supervision officers shall obtain information for the use of the court and the parole board relative to persons who are under consideration for release to community supervision, whether directly from the court or a from a sentence to correctional institutions of the commonwealth, especially as to the details of their offenses and their previous character and history. They may for that purpose require of the police authorities any facts in their possession relative to such persons if the communication thereof will not, in the opinion of the authorities, be detrimental to the public interest.
Section 6. Except as otherwise provided by law, a community supervision officer shall, have all the powers of a police officer necessary in the performance of his official duties, and may act in any part of the commonwealth.
Section 7. The governor, upon the written recommendation of the commissioner, may appoint any employee of the department as a special state police officer for a term of 3 years, unless sooner removed by the commissioner. Officers so appointed may serve warrants issued by the governor, orders of removal or transfer of persons or prisoners issued by the commissioner and warrants issued by any court or trial justice in the commonwealth for the arrest of a person charged with the crime of escape or attempt to escape from a penal institution, from the custody of an officer while being conveyed to or from any such institution, and may perform police duty about the premises of penal institutions. Such special state police officers of the department of community supervision may also perform police duties:
(1) when on official duty as a community supervision officer and in the company of an onduty police officer or state police officer during the course of such police officers' official duties;
(2) to serve arrest warrants issued by any court in the commonwealth for the arrest of any person charged with any crime;
(3) when arresting persons under community supervision pursuant to warrants or detainers of the parole board or transporting the persons under the community supervision, over individuals who attempt or threaten to interfere with such special state police officers of the department of community supervision in the performance of their duties;
(4) on the premises of department of community supervision facilities, which facilities shall include, but not be limited to community supervision and re-entry centers, and locations where the parole board is conducting a hearing or other board business;

(5) including applying for and executing search warrants in the course of an investigation of violations of conditions of community supervision, and upon complaint on oath that such special state police officer has probable cause to believe that a person under conditions of community supervision, for whom a current community supervision arrest warrant is outstanding, is concealed within a house, place, vessel or anywhere within the commonwealth or territorial waters thereof or vehicle of another;
(6) including, after such applying for and executing search warrants in the course of an investigation of violations of conditions of community supervision after notifying the appropriate local police department or the state police and upon complaint on oath that such special state police officer has probable cause to believe that stolen or embezzled property or property obtained by false pretenses, property which has been used as the means of committing a crime, property which has been concealed to prevent a crime from being discovered or property which is unlawfully possessed or kept or concealed for an unlawful purpose is in the possession or control of a person under conditions of community supervision; and
(7) including applying for and executing search warrants in the course of an investigation of violations of persons under conditions of community supervision, and upon complaint on oath that such special state police officer reasonably believes that evidence of a violation of conditions of community supervision is concealed on such person or under such exclusive control. Whenever evidence of a crime has been discovered by such special state police officer, the appropriate local police department or state police shall be notified immediately.
Section 8. A term of community supervision shall begin (a) at the time of sentencing if ordered by the superior, municipal or district court; (b) upon completion of the term of incarceration when sentenced by the court under sections 1, 1A, 5, 8 or 8A of chapter 279, or any court order or sentence to a term of community supervision to commence after incarceration; or (c) upon issuance of a permit for release to community supervision by the parole board under chapter 127A; or (d) at the commencement of mandatory post-release supervision under chapter 127C.
When a person is sentenced by the superior, municipal, or district court to community supervision, the person is subject to the conditions of community supervision as of the date of sentencing, unless otherwise ordered by the court.
When a person is sentenced by the court to community supervision to commence after a period of incarceration, the person is subject to the conditions of community supervision upon completion of the term of confinement as ordered by the court.
When a person is released to community supervision by the parole board, the person is subject to the conditions of community supervision as of the date determined by the parole board.
When a person is released to community supervision for mandatory post-release supervision, the person is subject to the conditions of community supervision at the commencement of mandatory post-release supervision under chapter 127C.
When a person is released to community supervision for lifetime community supervision under this chapter, the person is subject to the conditions of community supervision at the time of the court order or as of the date determined by the parole board.
Section 9. Every person who is sentenced by the court or released by the parole board to community supervision shall report to and be placed under the supervision of the department. The department shall assess the person's supervision level using the department's designated risk assessment tool and may recommend additional conditions of community supervision based on public safety. At a minimum the conditions shall include:
(1) Report as directed to a community correction officer;
(2) Remain within the geographical boundaries;
(3) Notify the community corrections officer of any change in the person's address or

employment;
(4) Pay supervision fee assessment and all fines;
(5) Disclose the fact of supervision to any mental health or chemical dependency treatment provider; and
(6) Obey all laws.
The department may not impose conditions that are contrary to those ordered by the court or the parole board and may not contravene, increase or decrease conditions imposed by either the court or the parole board. The department shall return to the court to request in writing any modifications of the supervision conditions.
The department shall return to the parole board in accordance with this section to request in writing any modifications of the supervision conditions or may modify supervision conditions as otherwise provided in the parole board's regulations, rules or policies.
The department shall be given reasonable opportunity to assess the person and provide the court or parole board with a comprehensive community supervision plan.
Section 10. Under the direction of the commissioner, the department shall oversee and operate programs it has established to provide the tools and services necessary to complete the conditions of a term of community supervision, whether ordered by the court or the parole board. Such programs shall be established to enable the department to identify a comprehensive community supervision plan which shall include appropriate conditions of supervision and release for recommendation to the court and the parole board, to the extent practicable, without requiring the provision of unnecessary services or duplication of services.
The department shall keep 1 centralized record of every person placed in its supervision, including but not limited to records of case investigation, supervision, substance abuse or mental health treatment whether inpatient, residential, or outpatient, training, GED classes, employment counseling, employment, violation proceedings, payment of fees and restitution, and any other rehabilitative services provided to the person whether in fulfillment of an ordered condition or otherwise obtained. The department will make every effort to provide such rehabilitative services with consistency, reason, and without unnecessary duplication. Records of the department of corrections and the court shall be made available to the department and incorporated into its record to reasonably ensure a complete report of the person's treatment and efforts.
The commissioner shall work in consultation with the Massachusetts sentencing commission, the administrative office of the trial court, the office of the commissioner of probation, the parole board, the department of correction and the county sheriffs to fulfill the requirements of this section.
Section 11. The superior, municipal or district court may impose as a sentence a term of community supervision. The court may specify service of a sentence of administrative community supervision or supervised community supervision. When such sentence is ordered, the court shall impose conditions of community supervision as provided in this chapter. Such conditions shall be determined based on the sentencing report and recommendations of a community supervision officer of the department and the discretion of the court. The conditions of community supervision imposed by a court upon an person under this section, sections 1, 1A, 5, 6A, 8 or 8A of chapter 279, section 87 of chapter 276 or any court order or sentence to a term of community supervision may include, but shall not be limited to, participation by the person in specified rehabilitative programs or performance by the person of specified community service work for a stated period of time.
Nothing is this section shall be construed to limit a court from ordering additional conditions when in its discretion such conditions are necessary and are within the department's ability and resources to provide.
Section 12. When the parole board grants a community supervision permit in accordance with section 5 of chapter 127A, the prisoner shall be allowed to go upon community supervision

outside prison walls and enclosure according to the terms and conditions as the parole board shall prescribe, but shall remain, while thus under community supervision, subject to the jurisdiction of the department of community supervision until the expiration of the term of imprisonment to which he has been sentenced or until the date which has been determined by deductions from the maximum term of his sentence or sentences for good conduct or until such earlier date as the board determines that it is in the public interest for the prisoner to be granted a certificate of termination of sentence.

Section 13. (a) A person upon whom a sentence of community supervision for life has been imposed under section 45 of chapter 265 or section 178H of chapter 6, shall be subject to the jurisdiction of the parole board and the department of community supervision for the term of such sentence.

Except as otherwise provided in this section, a person serving such sentence of community supervision for life shall be subject to the provisions of law governing the department of community supervision and parole board as if he were a person under community supervision following a term of incarceration. The parole board shall impose terms and conditions for such sentence within 30 days prior to the commencement of community parole supervision. The terms and conditions may be revised, altered or amended by the parole board at any time.

A person under community supervision for life shall be under the jurisdiction, supervision and control of the department of community supervision in the same manner as a person under community supervision following a term of incarceration. The parole board shall be authorized to establish any conditions of community supervision for life, on an individual basis, as may be necessary to ensure public safety. Such conditions may include protecting the public from such person committing a sex offense or kidnapping as well as promoting the rehabilitation of such person. Such conditions shall include sex offender treatment with a recognized treatment provider in the field for as long as the board deems necessary, and compliance with the requirements of sections 178C to 178P, inclusive, of chapter 6.

The board is authorized to impose and enforce a supervision and rehabilitation fee upon a person on community supervision. To the extent possible, without reducing the income of a person under community supervision to such an extent that the potential for successful community reintegration is diminished, the department of community supervision shall set such fee in an amount that will substantially defray the cost of the community supervision program. The department of community supervision shall also establish a fee waiver procedure for hardship and indigency cases.

(b)(1) Notwithstanding the parole board's authority to issue a certificate of termination of sentence under section 14 of chapter 127A after a person sentenced to community supervision for life has been on such supervision for a period of 15 years, such person may petition the parole board for termination of community supervision. Such termination may only occur by a majority vote of all the members. Upon receiving such a petition, the board shall, within 60 days, conduct a hearing before the full membership. At least 30 days prior to a hearing on the petition, the board shall cause a criminal history check to be conducted and notify in writing the victims of the crime for which the sentence was imposed, the attorney general, the district attorney in whose district the sentence was imposed, the chief of police or head of the organized police department of the municipality in which the crime was committed and the chief of police or head of the organized police department of the municipality in which the parolee resides, of the person's petition for release from supervision. Such officials and victims shall be provided the opportunity to respond to such petition. Such officials and victims may appear in person or be represented or make written recommendations to the board, but failure of any or all of such officials to appear or make recommendations shall not delay the termination procedure.

If a victim is deceased at the time the hearing on termination of the sentence is scheduled, the deceased victim may be represented by his relatives in the following order: mother, father, spouse, child, grandchild, brother or sister, niece or nephew.

(2) Prior to the hearing, the petitioner shall be examined, personally interviewed and evaluated by a psychiatrist or licensed psychologist who is an expert in the field of sex offender treatment and who is approved by the board. The psychiatrist or psychologist shall file with the board written reports of his examinations and diagnosis and his recommendation for the disposition of such petitioner. The petitioner's treatment while on community parole supervision shall be examined and considered by such psychiatrist or psychologist in such recommendation. Such reports shall be admissible in a hearing conducted pursuant to this section. If such petitioner refuses to be personally interviewed by such psychiatrist or psychologist, without good cause, such petitioner shall be deemed to have waived his right to a hearing on the petition and the petition shall be dismissed by the board. The cost of such examination and evaluation shall be the responsibility of the petitioner; provided, however, that the board shall establish procedures for cases of hardship or indigency.

(3) At the hearing, the board shall call such witnesses as it deems necessary, including the examining psychiatrist or psychologist, the appropriate district attorney, the attorney general, the police chief or the victims of the crime or such crime victims' family members, as the board deems necessary. The petitioner may offer such witnesses and other proof at the hearing as is relevant to the petition.

(4) The board shall terminate community supervision for life if the petitioner demonstrates, by clear and convincing evidence, that he has not committed a sex offense or a kidnapping since his conviction, that he is not likely to pose a threat to the safety of others and that the public interest is not served by further community supervision over the petitioner.

(5) If a petition for release from supervision is denied by the board, such petitioner may not file another such petition for a period of 3 years.

(c) An individual who violates a condition of community supervision shall be subject to the provisions of section 16 of this chapter and sections 14 through 16 of chapter 127A. If the person under community supervision has served the entire period of confinement under his original sentence, the original term of imprisonment shall, upon a first violation, be increased to imprisonment in a house of correction for 30 days if such violation does not otherwise constitute a criminal offense. Upon a second violation, the original term of imprisonment shall be increased to 180 days in the house of correction if such violation does not otherwise constitute a criminal offense. Upon a third or subsequent violation, the original term of imprisonment shall be increased to 1 year in the house of correction if such violation does not otherwise constitute a criminal offense. If such violation otherwise constitutes a criminal offense, the increased term of imprisonment shall be served on and after any sentence received for commission of the new offense.

Section 14. Any person under community supervision or under community supervision for life for any offense listed within the definition of "sex offense", a "sex offense involving a child" or a "sexually violent offense", as defined in section 178C of chapter 6, shall, as a requirement of such community supervision, wear a global positioning system device, or any comparable device, administered by the board at all times for the length of his parole for any such offense. The parole board shall, in addition to any other condition, establish defined geographic exclusion zones including, but not limited to, the areas in and around the victim's residence, place of employment and school and other areas defined to minimize the person offender's contact with children, if applicable. If the offender enters an excluded zone, as defined by the terms of his community supervision, the location data shall be immediately transmitted to the police department in the municipality wherein the violation occurred and the department of community supervision, by telephone, electronic beeper, paging device or other appropriate means. If the parole board or the offender's community supervision officer believes that the person has violated his terms of community supervision by entering an excluded zone as prescribed in this section, the parole board or community supervision officer shall cause the person to be taken into temporary custody in accordance with section 16 of this chapter and

sections 14, 15, and 16 of chapter 127A.
The fees incurred by installing, maintaining and operating the global positioning system device, or comparable device, shall be paid by the person under community supervision. If that person establishes his inability to pay such fees, the board may waive them.
Section 15. If a community supervision officer believes that a person under community supervision following a term of incarceration, or in connection with community supervision for life or mandatory post-release supervision has lapsed or is about to lapse into criminal ways or has associated or is about to associate with criminal company or that he has violated the conditions of his community supervision, the community supervision officer may, with the consent of a supervisor or other superior officer, issue a warrant for the temporary custody of the person for a period not longer than fifteen days, during which period he shall notify the director of community supervision or a supervisor of his action and submit a complete report for final decision by the parole board. The detention of any such person may be further regulated by the rules of the board. The parole board shall have the right to withdraw the warrant for temporary custody and such withdrawal shall not affect the validity of any subsequent warrants issued. Upon the withdrawal of the warrant, the time from the issuance of the warrant until the withdrawal shall be considered as part of the original sentence. Such warrant shall constitute sufficient authority to a community supervision officer and to the superintendent, jailer, or any other person in charge of any jail, house of correction, lockup, or place of detention to whom it is exhibited to hold in temporary custody the person retaken pursuant thereto.
Section 16. (a) The court may revoke its sentence to a term of community supervision, where the person under the supervision of the department is alleged to have violated 1 or more conditions of community supervision. The commissioner shall adopt rules and regulations to govern the surrender and violation processes of the department, which shall be consistent with the rules of court and include, but not be limited to, the provisions of section 3 and of chapter 279.
(b) Pursuant to section 14 of chapter 127A, the parole board may revoke a permit to be at liberty at any time prior to its expiration. The chair shall adopt rules and regulations to govern the surrender and violation processes and its hearings.
Section 17. The court shall assess upon every person placed under the supervision of the department including all persons placed on community supervision for offenses under section 24 of chapter 90, a monthly community supervision fee, hereinafter referred to as "community supervision fee", in the amount of $75 per month. The person shall pay the community supervision fee once each month during such time as the person remains supervised by the department. The court shall assess upon every person placed on administrative community supervision a monthly administrative supervision fee, hereinafter referred to as "administrative community supervision fee", in the amount of $25 per month. The person shall pay the administrative community supervision fee once each month during such time as the person remains on administrative community supervision. Notwithstanding the foregoing, the court may waive the fees upon any person accused or convicted of a violation of section 1 or 15 of chapter 273, where compliance with an order of support for a spouse or minor child is a condition of community supervision.
The court may not waive payment of either or both of the fees unless it determines after a hearing and upon written finding that such payment would constitute an undue hardship on the person or his family due to limited income, employment status or any other factor. Following the hearing and upon such written finding that either or both of the fees would cause such undue hardship: (1) in lieu of payment of the community supervision fee the court shall require the person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the department, for not less than 1 day per month and (2) in lieu of payment of the administrative community supervision fee the court shall require the person to perform unpaid community work service at a public or nonprofit agency or facility, as approved

and monitored by the department, for not less than 4 hours per month. Such waiver shall be in effect only during the period of time that the person is unable to pay the monthly fee.
The court may waive payment of either or both of the fees in whole or in part if the person is assessed payment of restitution. In such cases, the fees may be waived only to the extent and during the period that restitution is paid in an amount equivalent to the fee.
The community supervision fee shall be collected by the department and transmitted to the state treasurer for deposit into the General Fund. The state treasurer shall account for all such fees received and report the fees annually, itemized by court division, to the house and senate committees on ways and means.
The court shall also assess upon every person placed on supervised community supervision, including all persons placed on community supervision for offenses under section 24 of chapter 90, a monthly victim services surcharge, hereinafter referred to as "victim services surcharge", in the amount of $5 per month. The person shall pay the victim services surcharge once each month during such time as the person remains on such community supervision. The court shall assess upon every person placed on administrative community supervision a monthly administrative victim services surcharge, hereinafter referred to as "administrative victim services surcharge" in the amount of $1 per month.
The person shall pay the administrative victim services surcharge once each month during such time as the person remains on administrative community supervision.
Notwithstanding the foregoing, the fees shall not be assessed upon any person accused or convicted of a violation of section 1 or 15 of chapter 273, where compliance with an order of support for a spouse or minor child is a condition of probation or community supervision.
The court may not waive payment of either or both of the fees unless it has determined, after a hearing and upon written finding, that such payment would constitute an undue hardship on the person or his family due to limited income, employment status or any other factor. Such waiver shall be in effect only during the period of time that the person is unable to pay his monthly probation fee.
The community supervision fee shall be collected by the department and shall be transmitted to the state treasurer for deposit into the General Fund of the commonwealth. The state treasurer shall account for all such fees received and report the fees annually, itemized by court division, to the house and senate committees on ways and means.
Section 18. If a person is placed on community supervision upon condition of restitution or reparation to be made to the person injured in the commission of the offense, and payment is not made at once, the court may order that it shall be made to the community supervision officer, who shall give receipts for and keep record of all payments to him, pay the money to the person injured and keep the receipt, and notify the clerk of the court whenever the full amount of the money is received or paid in accordance with such order or with any modification.
Section 19. (a) The department shall adopt regulations which shall establish supervision levels based on risk-needs assessments, ranging from minimum community supervision for low-risk persons to maximum community supervision of high-risk persons, with a focus on reducing the risk posed by high-risk persons. The regulations shall include the use of graduated and intermediate sanctions, as appropriate, in response to non-criminal violations of community supervision conditions and, in the discretion of the parole board, for low-level criminal violations. Nothing in this section or in the regulations shall limit the authority of the parole board, or the superior, municipal or district court to impose conditions of community supervision, or, in the case of the juvenile court, probation supervision, to protect the public or promote the rehabilitation of any person. The department shall ensure such rules are available to the public.
(b) The department shall also adopt procedures, rules and regulations for the orderly operation of the department, for community supervision officers and the performance of their, community supervision duties, including methods and procedures of investigation, sentencing reports, mediation, supervision, case work, record keeping, accounting, caseload and case

management, the classification of persons under the department's supervision, the risk assessment tools and process for the effective assignment of conditions of community supervision, the factors to consider in establishing a community supervision plan, the eligibility of persons to be placed under the supervision of the department, the establishment of community corrections and re-entry centers and the delivery of services to the persons in order to fulfill the requirements of community supervision.

Section 20. The department of community supervision shall develop and implement a public education program about community supervision and corrections, provide technical assistance, training and education to the judiciary and criminal justice system agencies and personnel, and coordinate training for providers.

Section 21. Three years after the inception of the department, the commissioner shall study the results of the effectiveness of the establishment of the department of community supervision. The study shall address the effect on the rate of recidivism, overall spending for corrections and alternative sentencing, and prison commitments. The commissioner shall report its findings to the governor, the joint committees on criminal justice and public safety, the clerks of the house of representatives and the senate.

Section 22. Sections 22 to 36, inclusive, shall be designated and may be known as "the interstate compact for adult offender supervision." This designation shall, when appropriate, include corresponding provisions of earlier laws.

The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult persons in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of persons, transfer supervision authority in an orderly and efficient manner, and when necessary return persons to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of persons in the community; to provide for the effective tracking, supervision and rehabilitation of these persons by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states. In addition, this compact shall: create an interstate commission which shall establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies, which shall promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined persons are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of persons and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of persons for officials involved in such activity. The compacting states shall recognize that there is no "right" of any person to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person under supervision subject to this compact and by-laws and rules promulgated hereunder. It shall be the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

Section 23. As used in sections 22 to 36, inclusive, the following words shall, unless the context

clearly requires a different meaning have the following meanings:
"Adult", individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.
"By-laws", binding rules established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.
"Compact administrator", the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of persons subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.
"Compacting state", any state which has enacted the enabling legislation for this compact.
"Commissioner", the voting representative of each compacting state appointed pursuant to section 25 of this chapter.
"Interstate commission", the interstate commission for adult person supervision established by this compact.
"Member", the commissioner of a compacting state or his designee, who shall be a person officially connected with the commissioner.
"Non compacting state", any state which has not enacted the enabling legislation for this compact.
"Person", an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies.
"Person", any individual, corporation, business enterprise, or other legal entity, either public or private.
"Rules", acts of the interstate commission, duly promulgated pursuant to section 29 of this chapter, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.
"State", a state within the United States, the District of Columbia and any other territorial possessions of the United States.
"State council", the resident members of the state council for interstate adult person supervision created by each state under section 25 of this chapter.
Section 24. (a) The compacting states hereby create the interstate commission for adult person supervision.
(b) The interstate commission shall be a body corporate and joint agency of the compacting states.
(c) The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.
(d) The interstate commission shall consist of commissioners duly appointed from each of the member states.
(e) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such non-commissioner members shall include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the interstate commission shall be ex-officio members. The interstate commission may provide in its by-laws for such additional, ex-officio, non-voting members as it deems necessary.
(f) Each compacting state represented at any meeting of the interstate commission is entitled to 1 vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required through the by-laws of the interstate commission.

(g) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.
(h) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the by-laws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking power and the power to amend the compact. The executive committee shall oversee the day-to-day activities managed by the executive director and interstate commission staff, administer enforcement and compliance with the provisions of the compact and its by-laws and as directed by the interstate commission, and perform other duties as directed by commission or as set forth in the by-laws.
Section 25. The commissioner of the department of community supervision, or his designee, shall serve as the compact administrator and as the state's commissioner on the interstate compact commission. The Massachusetts state council shall be appointed by the compact administrator. The state council shall be comprised of 5 members whose term of office shall be for 4 years. The state council shall meet at least twice a year. The state council may advise the compact administrator or his designee on participation in the interstate commissioner activities and administration of the compact. The state council's membership shall include at least 1 representative from the legislative, judicial and executive branches of government and victims' groups.
Section 26. The interstate commission shall have the following powers and duties:
(a) to adopt a seal and suitable by-laws governing the management and operation of the interstate commission;
(b) to promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
(c) to oversee, supervise and coordinate the interstate movement of persons subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission;
(d) to enforce compliance with compact provisions, interstate commission rules, and by-laws, using all necessary and proper means including, but not limited to, the use of the judicial process;
(e) to establish and maintain offices;
(f) to purchase and maintain insurance and bonds;
(g) to borrow, accept or contract for services of personnel including, but not limited to, members and their staffs;
(h) to establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by section 24 of this chapter, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
(i) to elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix the compensation, define the duties and determine the qualifications thereof; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;
(j) to accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize and dispose of the same;
(k) to lease, purchase, accept contributions or donations of, or to otherwise own, hold, improve or use any property, real, personal or mixed;
(l) to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

(m) to establish a budget and make expenditures and levy dues as provided in section 31;
(n) to sue and be sued;
(o) to provide for dispute resolution among compacting states;
(p) to perform such functions as may be necessary or appropriate to achieve the purposes of this compact;
(q) to report annually to the legislatures, governors, judiciary and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;
(r) to coordinate education, training and public awareness regarding the interstate movement of persons for officials involved in such activity; and
(s) to establish uniform standards for the reporting, collecting and exchanging of data.
Section 27. (a) The interstate commission shall, by a majority of the members, within 12 months of the first interstate commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:
(1) establishing the fiscal year of the interstate commission;
(2) establishing an executive committee and such other committees as may be necessary;
(3) providing reasonable standards and procedures:
(i) for the establishment of committees; and
(ii) governing any general or specific delegation of any authority or function of the interstate commission;
(4) providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
(5) establishing the titles and responsibilities of the officers of the interstate commission;
(6) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the by-laws shall exclusively govern the personnel policies and programs of the interstate commission;
(7) providing a mechanism for cessation of operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;
(8) providing transition rules for start up administration of the compact; and
(9) establishing standards and procedures for compliance and technical assistance in administering the compact.
(b) (1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice-chairperson, each of whom shall have such authorities and duties as may be specified in the by-laws. The chairperson or, in his or her absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission, except that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.
(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.
(c) The interstate commission shall maintain its corporate books and records in accordance with the by-laws.
(d) (1) The members, officers, executive director and employees of the interstate commission

shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities. Nothing in this paragraph, however, shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities if the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, his appointed designee or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, if the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Section 28. (a) The interstate commission shall meet and take such actions as are consistent with the provisions of the compact.

(b) Except as otherwise provided in the compact and unless a greater percentage is required by the by-laws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state, except that a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings at which members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's by-laws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent disclosure of such information or records would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate

commission shall promulgate rules consistent with the principles contained in the Government in Sunshine Act, 5 U.S.C. Section 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public if it determines by 2/3 vote that an open meeting would be likely to:
(1) relate solely to the interstate commission's internal personnel practices and procedures;
(2) disclose matters specifically exempted from disclosure by statute;
(3) disclose trade secrets or commercial or financial information that is privileged or confidential;
(4) involve accusing any person of a crime, or formally censuring any person;
(5) disclose information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy;
(6) disclose investigative records compiled for law enforcement purposes;
(7) disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of, the interstate commission relative to a regulated entity for the purpose of regulation or supervision of such entity;
(8) disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or
(9) specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.
For every meeting closed pursuant to this subsection, the interstate commission's chief legal officer shall publicly certify that, in his opinion, the meeting may be closed to the public, and shall reference each relevant exempting provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action shall be identified in such minutes.
(g) The interstate commission shall collect standardized data concerning the interstate movement of persons as directed through its by-laws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.
Section 29. (a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.
(b) Rulemaking shall occur pursuant to the criteria set forth in this section and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended.
(c) All rules and amendments shall become binding as of the date specified in each rule or amendment.
(d) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.
(e) When promulgating a rule, the interstate commission shall:
(1) publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;
(2) allow persons to submit written data, facts, opinions and arguments, which shall be publicly available;
(3) provide an opportunity for an informal hearing; and
(4) promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the Administrative Procedure Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(f) Subjects to be addressed within 12 months after the first meeting shall, at a minimum, include:-

(1) notice to victims and opportunity to be heard;

(2) person registration and compliance;

(3) violations or returns;

(4) transfer procedures and forms;

(5) eligibility for transfer;

(6) collection of restitution and fees from persons;

(7) data collection and reporting;

(8) the level of supervision to be provided by the receiving state;

(9) transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(10) mediation, arbitration and dispute resolution.

(g) The existing rules governing the operation of the previous compact superseded by this chapter shall be null and void 12 months after the first meeting of the interstate commission created hereunder.

(h) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but in no event later than 90 days after the effective date of the rule.

Section 30. (a) (1) The interstate commission shall oversee the interstate movement of adult persons in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent.

(3) In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities. The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and non-compacting states. The interstate commission shall enact a by-law or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) The interstate commission, in the reasonable exercise of its discretion, shall enforce this compact using any or all means set forth herein.

Section 31. (a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each

compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which assessments shall total an amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of persons in each compacting state and shall promulgate a rule binding upon all compacting states which governs such assessment.
(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any compacting state, except by and with the authority of such compacting state.
(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its by-laws except that all receipts and disbursements of funds handled by the interstate commission shall be audited annually by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.
Section 32. (a) Any state is eligible to become a compacting state.
(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of non-member states, or their designees, shall be invited to participate in interstate commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.
(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.
Section 33. (a) (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. A compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.
(2) The effective date of withdrawal is the effective date of the repeal.
(3) The withdrawing state shall immediately notify the chairperson of the interstate commission, in writing, upon the introduction of legislation repealing this compact in the withdrawing state.
(4) The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.
(5) The withdrawing state shall be responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.
(6) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.
(b) (1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under the compact, the by-laws or any duly promulgated rules the interstate commission may impose any or all of the following penalties:
(i) fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;
(ii) remedial training and technical assistance as directed by the interstate commission; and

(iii) suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state; the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default shall include, but not be limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission by-laws or duly promulgated rules. The interstate commission shall immediately notify the defaulting state, in writing, of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension.

(3) Within 60 days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(4) The defaulting state shall be responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination.

(5) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state.

(6) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the Federal District wherein the interstate commission's offices are located, has its offices to enforce compliance with the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(d) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to 1 compacting state.

Upon the dissolution of this compact, the compact shall become null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be terminated and any surplus funds shall be distributed in accordance with the by-laws.

Section 34. (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Section 35. (a) (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) (1) All lawful actions of the interstate commission, including all rules and by-laws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with the terms thereof.
(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.
(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.
Section 36. Wherever, in any general or special law, there are used in connection with adult or youthful offender criminal proceedings in the superior, district or municipal court, the following words: (a) probation, (b) probation officer, (c) department of probation, (d) commissioner of probation, (e) office of the commissioner of probation, or (f) words having the same connotation as (a)-(e) above, the words shall, unless the context otherwise requires, refer to the department of community supervision established in this chapter, the programs and services it administers, or the commissioner of community supervision or such officer or employee of the department of community supervision as the commissioner from time to time may designate. This section shall not apply to the use of the words in connection with juvenile proceedings or proceedings in the probate and family court.
Wherever, in any general or special law, there are used in connection with adult or youthful offender criminal proceedings in the superior, district or municipal court, the following words: (a) parole, (b) parole permits, (c) parole supervision, or (d) words having the same connotation as (a)-(c), the words shall, unless the context otherwise requires, refer to the programs and services administered by the department of community supervision. This section shall not apply to the use of the words in connection with juvenile proceedings or proceedings in the probate and family court.
Section 37. Notwithstanding any general or special law to the contrary, the secretary of administration and finance may authorize the transfer of funds between the department of correction, the department of community supervision and the parole board as necessary to achieve the purposes of chapters 127, 127A, 127B, 127C; provided, that no transfer authorized by this section shall exceed 7 per cent of the amount appropriated for an item; and provided further, that the transfer may be made only with the written approval of the heads of the sending and receiving agencies and of the secretary of public safety and security.
CHAPTER 127C
MANDATORY POST-RELEASE SUPERVISION
Section 1. All sentences of incarceration to state prison shall include a period of post-release supervision, excluding sentences for those prisoners for whom community supervision eligibility is determined by section 9 of chapter 127A. Except as provided in this chapter, for individuals who complete the incarceration portion of their sentences without supervised release or are reincarcerated for the remainder of the sentence for violating the terms of community supervision, the period of mandatory post-release supervision shall be 25 per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months. Where an individual is sentenced to incarceration on multiple offenses to be served concurrently, the greater of the maximum terms imposed at sentencing shall be used to calculate the mandatory post-release supervision period. Mandatory post-release supervision as established in this chapter shall not be imposed upon any individual who successfully completes a period of community supervision imposed by a court at sentencing, upon an individual who is granted a community supervision permit under chapter 127A and successfully completes a period of community supervision, or upon an individual sentenced to

lifetime community supervision under section 45 of chapter 265 or section 178H of chapter 6, being supervised under section 13 of chapter 127B. An individual subject to this chapter may be supervised in another jurisdiction in accordance with sections 22 through 36 of chapter 127B and shall be considered on community supervision pursuant to a decision of the parole board for the purposes of supervision.

Section 2. Upon release, an individual sentenced to a term of incarceration in a state prison for any length of time shall be subject to the supervision and jurisdiction of the department of community supervision during the period of mandatory post-release supervision and shall be subject to the law, rules and regulations governing community supervision. The commissioner of the department of community supervision shall establish regulations to be implemented by the department for post-release supervision consistent with applicable provisions of chapters 127, 127A and 127B. The regulations shall establish supervision levels based on risk-needs assessments, ranging from minimum community supervision for low-risk persons to maximum community supervision of high-risk persons, with a focus on reducing the risk posed by high-risk persons. The regulations shall include the use of graduated and intermediate sanctions as appropriate in response to non-criminal violations of community supervision conditions and, in the discretion of the parole board, for low-level criminal violations. The regulations shall also establish guidelines with specific benchmarks, which if achieved by an individual shall reduce the period of time in which such individual is subject to post-release supervision. Nothing in this section or in the regulations shall limit the authority of the parole board, the superior, municipal, or district court to impose conditions of community supervision, or, in the case of the juvenile court, probation supervision to protect the public or promote the rehabilitation of any person.

Section 3. An individual subject to mandatory post-release supervision who has successfully completed 6 months of supervision shall be eligible for early termination of that supervision. Early termination shall only occur in accordance with procedures provided in the parole board regulations. In proceedings for early termination of mandatory post-release supervision, the parole board's considerations shall include, but not be limited to, the amount of time the individual has successfully spent under post-release supervision, efforts and achievements in the areas of employment, housing, education, counseling, substance abuse treatment and required testing programs, and any other circumstances that are relevant to the individual case.

Section 4. An individual who violates a condition of mandatory post-release supervision shall be subject to this section and to modification or revocation proceedings initiated by the department of community supervision through the parole board. The laws and regulations governing community supervision violation proceedings shall govern these modification or revocation proceedings. In all proceedings under this section, an individual who violates a condition of mandatory post-release supervision and such violation does not otherwise constitute a criminal offense may be placed under increased supervision, subjected to other conditions and intermediate sanctions, or upon a determination that such alternative sanctions are not appropriate, incarcerated as follows: Upon a first violation, the individual may be incarcerated for a period no greater than 2 months or the maximum remaining period of post-incarceration supervision, whichever is less. Upon a second violation, the prisoner may be incarcerated for a period no greater than 6 months or the maximum remaining period of post-incarceration supervision, whichever is less. Upon a third or subsequent violation the prisoner may be incarcerated for a period no greater than 12 months or the maximum remaining period of post-incarceration supervision, whichever is less. In all cases where the individual is not being incarcerated for a violation, the individual shall be subject to the graduated sanctions policy of the department of community supervision. In the case of any violation for use of controlled substances or an offense for operating under the influence of drugs or alcohol where the individual is not incarcerated for the violation, the period of mandatory post-release supervision may be extended to accommodate an appropriate substance abuse program, but the total shall not exceed the maximum supervisory period permitted under section 1 of this chapter. For any

violation of the conditions of mandatory post-release supervision, the period of supervision shall be stayed during a period of incarceration and it shall be resumed upon release. If the violation constitutes a criminal offense, the period of incarceration shall be served on and after any sentence received as a result of the new offense. Upon subsequent release, the greater of the maximum sentences of the original offense and subsequent offense shall be used to calculate the new mandatory post-release supervision period.

Section 5. Mandatory post-release supervision shall be considered stayed under the following circumstances: (a) the individual is immediately committed to the custody of any other state or of the United States to serve a period of incarceration less than the post-release supervision period required under this chapter; (b) the individual is immediately committed to the custody of the United States immigration authorities; or (c) the individual is committed pursuant to an order of custody under chapter 123A.

Section 6. Mandatory post-release supervision shall be considered completed under the following circumstances: (a) except as provided in sections 3 and 4, the individual serves a postrelease supervision period of 25 per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months; (b) the individual is granted early termination under section 3; (c) upon completion of the sentence, the individual is immediately committed to the custody of any other state or of the United States to serve a period of incarceration greater than or equal to the post-release supervision period required under this chapter; or (d) upon completion of the sentence, the individual is physically removed from the United States by immigration authorities for the purpose of permanent deportation.

SECTION 29. Section 178C of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in lines 55-121, the definitions of “sex offense,” “sex offense involving a child” and “sexually violent offense”, and inserting in place thereof the following words:-

“Sex offense”, an indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B½ of chapter 265; a repeat offense under section 13B¾ of chapter 265; indecent assault and battery on a mentally retarded person under section 13F of chapter 265; indecent assault and battery on a person age 14 or over under section 13H of chapter 265; rape under section 22 of chapter 265; rape of a child under 16 with force under section 22A of chapter 265; aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter 265; rape and abuse of a child under section 23 of chapter 265; aggravated rape and abuse of a child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265; assault with intent to commit rape under section 24 of chapter 265; assault of a child with intent to commit rape under section 24B of chapter 265; kidnapping of a child under section 26 of chapter 265; enticing a child under the age of 16 for the purposes of committing a crime under section 26C of chapter 265; enticing away a person for prostitution or sexual intercourse under section 2 of chapter 272; drugging persons for sexual intercourse under section 3 of chapter 272; inducing a minor into prostitution under section 4A of chapter 272; living off or sharing earnings of a minor prostitute under section 4B of chapter 272; second and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior under section 16 of chapter 272, but excluding a first or single adjudication as a delinquent juvenile before August 1, 1992; incestuous marriage or intercourse under section 17 of chapter 272; disseminating to a minor matter harmful to a minor under section 28 of chapter 272; posing or exhibiting a child in a state of nudity under section 29A of chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of chapter 272; possession of child pornography under section 29C of chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of chapter 272; aggravated rape under section 39 of chapter 277; or for conspiracy to commit any of these offenses, or for serving as an accessory thereto or attempting to commit a violation of any of the aforementioned sections pursuant to

section 6 of chapter 274 or a like violation of the laws of another jurisdiction, state, the United States or a military, territorial or Indian tribal authority.
“Sex offense involving a child”, an indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B½ of chapter 265; a repeat offense under section 13B¾ of chapter 265; rape of a child under 16 with force under section 22A of chapter 265; aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter 265; rape and abuse of a child under section 23 of chapter 265; aggravated rape and abuse of a child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265; assault of a child with intent to commit rape under section 24B of chapter 265; kidnapping of a child under the age of 16 under section 26 of chapter 265; enticing a child under the age of 16 for the purposes of committing a crime under section 26C of chapter 265; inducing a minor into prostitution under section 4A of chapter 272; living off or sharing earnings of a minor prostitute under section 4B of chapter 272; disseminating to a minor matter harmful to a minor under section 28 of chapter 272; posing or exhibiting a child in a state of nudity under section 29A of chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of chapter 272; possession of child pornography under section 29C of chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of chapter 272; aggravated rape under section 39 of chapter 277; or for conspiracy to commit any of these offenses, or for serving as an accessory thereto or attempting to commit a violation of any of the aforementioned sections pursuant to section 6 of chapter 274 or a like violation of the laws of another jurisdiction, state, the United States or a military, territorial or Indian tribal authority.
“Sexually violent offense”, indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B½ of chapter 265; a repeat offense under section 13B¾ of chapter 265; indecent assault and battery on a mentally retarded person under section 13F of chapter 265; rape under section 22 of chapter 265; rape of a child under 16 with force under section 22A of chapter 265; aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter 265; aggravated rape and abuse of a child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265; assault with intent to commit rape under section 24 of chapter 265; assault of a child with intent to commit rape under section 24B of chapter 265; drugging persons for sexual intercourse under section 3 of chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of chapter 272; aggravated rape under section 39 of chapter 277; or for conspiracy to commit any of these offenses, or for serving as an accessory thereto or attempting to commit a violation of any of the aforementioned sections pursuant to section 6 of chapter 274 or a like violation of the law of another jurisdiction, state, the United States or a military, territorial or Indian tribal authority, or any other offense that the sex offender registry board determines to be a sexually violent offense.
SECTION 30. Section 2 of chapter 211D, as so appearing, is hereby amended by striking out, in line 16, the words "probation department of the appointing court", and inserting in place thereof the following words:- department of community supervision.
SECTION 31. Section 2 ½ of chapter 211D, as so appearing, is hereby amended by striking out, in lines 3, 7, 10, 13, 32, 33-34, 37, 41, 43, 44, 53, 65, 66, 83, each occurrence of the words "chief probation", and inserting in place thereof the following words:- community supervision.
SECTION 32. Section 2 ½ of chapter 211D, as so appearing, is hereby further amended by striking out, in line 113, the words "office of the commissioner of probation", and inserting in place thereof the following words:- department of community supervision.
SECTION 33. Section 5 of chapter 211D, as so appearing, is hereby amended by striking out, in lines 10-11, the words "from the probation officer a written report containing the probation officer’s opinion", and inserting in place thereof the following words:- from the community

supervision officer a written report containing the officer's opinion.
SECTION 34. Chapter 211F of the General Laws is hereby repealed.
SECTION 35. Section 81 of chapter 218, as so appearing, is hereby amended by inserting after the word “probation”, in lines 9-10, the following words:- or community supervision.
SECTION 36. Chapter 265 of the General Laws is hereby amended by striking out section 45 and inserting in place thereof the following section:-
Section 45. Any person convicted of violating section 13B, 13B1/2, 13F, 13H, 22, 22A, 22B, 23, 23A, 24, 24B or 26 of this chapter or of an attempt to violate any of those sections pursuant to section 6 of chapter 274, after 1 or more prior convictions of indecent assault and battery on a child under the age of 14, aggravated indecent assault and battery on a child under 14, indecent assault and battery on a person 14 or older, assault of a child with intent to commit rape, rape of a child with force, aggravated rape of a child with force, rape and abuse of a child, aggravated rape and abuse of a child, rape, aggravated rape, assault with intent to commit rape, unnatural and lascivious acts, drugging for sex, kidnap or of any offense which is the same as or necessarily includes the same elements of the offense shall, in addition to the term of imprisonment authorized by such section, be punished by a term of community supervision for life, to be served under the jurisdiction of the parole board, as set forth in section 13 of chapter 127A. The sentence of community supervision for life shall commence immediately upon the expiration of the term of imprisonment imposed upon such person by the court or upon such person’s release from probation supervision or upon discharge from commitment to the treatment center pursuant to section 9 of chapter 123A, whichever occurs first.
SECTION 37. Section 18 of Chapter 275 is hereby repealed.
SECTION 38. Section 30 of chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after the words “probation officer”, in line 9, the following words:- or community supervision officer.
SECTION 39. Section 42A of chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after the word “probation”, in line 14, the following words:- or community supervision.
SECTION 40. Section 42A of chapter 276 of the General Laws, as so appearing, is hereby further amended by inserting after the word “probation”, in line 24, the following words:- or community supervision.
SECTION 41. Section 42A of chapter 276 of the General Laws, as so appearing, is hereby further amended by inserting after the words “probation officer”, in line 28, the following words:- or community supervision officer.
SECTION 42. Section 57 of chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after the words “probation officer”, in line 42, the following words:- in juvenile or probate court, or designated court staff.
SECTION 43. Chapter 276 of the General Laws, as so appearing, is hereby further amended by striking out section 58 and inserting in place thereof the following section:-
Section 58. A justice or a clerk or assistant clerk of the district court, a bail commissioner or master in chancery, in accordance with the applicable provisions of section 57, shall, when a person is held under arrest or committed either with or without a warrant for an offense other than an offense punishable by death, or, upon the motion of the commonwealth, for an offense enumerated in section 58A or for any offense on which a warrant of arrest has been issued by the superior court, hold a hearing in which the defendant and his counsel, if any, may participate and inquire into the case and shall admit such person to bail on his personal recognizance without surety unless the justice, clerk or assistant clerk, bail commissioner or master in chancery determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person before the court. In his determination under this section as to whether release will reasonably assure the appearance of the person before the court, the justice, clerk or assistant clerk, bail commissioner or master in chancery shall, on the basis of

any information which he can reasonably obtain, take into account the nature and circumstances of the offense charged, the potential penalty the person faces, the person's family ties, financial resources, employment record and history of mental illness, his reputation and the length of residence in the community, his record of convictions, if any, any illegal drug distribution or present drug dependency, any flight to avoid prosecution or fraudulent use of an alias or false identification, any failure to appear at any court proceeding to answer to an offense, whether the person is on bail pending adjudication of a prior charge, whether the acts alleged involve violation of a temporary or permanent order issued pursuant to sections 18 or 34B of chapter 208, section 32 of chapter 209, sections 3, 4, 5, or 32 of chapter 209, or sections 15 or 20 of chapter 209C, or abuse as defined in section 1 of chapter 209A, whether the person has any history of orders issued against him pursuant to the aforesaid sections, whether he is on probation, parole, or community supervision, or other release pending completion of sentence for any conviction, and whether he is on release pending sentence or appeal for any conviction. The person authorized to admit the person to bail shall provide as an explicit condition of release for any person admitted to bail pursuant to this section or section 57 of this chapter that, should the person be charged with a crime during the period of his release, his bail may be revoked in accordance with the third paragraph of this section. If the justice or clerk or assistant clerk of the district court, the bail commissioner or master in chancery determines that a cash bail is required, the person shall be allowed to provide an equivalent amount in a surety company bond. If the justice or clerk or assistant clerk of the district court, the bail commissioner or master in chancery determines it to be necessary, the defendant may be ordered to abide by specified restrictions on personal associations or conduct including, but not limited to, avoiding all contact with an alleged victim of the crime and any potential witness or witnesses who may testify concerning the offense, as a condition of release.

A person, before being released on personal recognizance without surety, shall be informed by the person authorized to admit such person to bail of the penalties provided by section 82A of this chapter if he fails without sufficient excuse to appear at the specified time and place in accordance with the terms of his recognizance. A person authorized to take bail may charge the fees authorized by section 24 of chapter 262, if he goes to the place of detention of the person to make a determination provided for in this section although the person is released on his personal recognizance without surety. The fees shall not be charged by any clerk or assistant clerk of a district court during regular working hours.

A person aforesaid charged with an offense and not released on his personal recognizance without surety by a clerk or assistant clerk of the district court, a bail commissioner or master in chancery shall forthwith be brought before the next session of the district court for a review of the order to recognize in accordance with the standards set forth in the first paragraph of this section. The court shall provide as an explicit condition of release for any person admitted to bail pursuant to this section or section 57 that should the person be charged with a crime during the period of his release, his bail may be revoked in accordance with this paragraph and the court shall enter in writing on the court docket that the person was so informed and the docket shall constitute prima facie evidence that the person was so informed. If a person is on release pending the adjudication of a prior charge, and the court before which the person is charged with committing a subsequent offense after a hearing at which the person shall have the right to be represented by counsel, finds probable cause to believe that the person has committed a crime during the period of release, the court shall then determine, in the exercise of its discretion, whether the release of the person will seriously endanger any person or the community. In making the determination, the court shall consider the gravity, nature and circumstances of the offenses charged, the person's record of convictions, if any, and whether the charges or convictions are for offenses involving the use or threat of physical force or violence against any person, whether the person is on probation, parole, or community supervision, or other release pending completion of sentence for any conviction, whether he is

on release pending sentence or appeal for any conviction, the person's mental condition, and any illegal drug distribution or present drug dependency. If the court determines that the release of the person will seriously endanger any person or the community and that the detention of the person is necessary to reasonably assure the safety of any person or the community, the court may revoke bail on the prior charge and may order the person held without bail pending the adjudication of the prior charge, for a period not to exceed 60 days. The hearing shall be held upon the person's first appearance before the court before which the person is charged with committing an offense while on release pending adjudication of a prior charge, unless that person, or the attorney for the commonwealth, seeks and the court allows, a continuance because a witness or document is not immediately available. Except for good cause, a continuance on motion of the person shall not exceed 7 days and on motion of the attorney for the commonwealth may not exceed 3 business days. During such continuance, the person may be detained consistent with the provisions of this section. The order shall state in writing the reasons therefor and shall be reviewed by the court upon the acquittal of the person, or the dismissal of, any of the cases involved. A person so held shall be brought to trial as soon as reasonably possible. A person aggrieved by the denial of a district court justice to admit him to bail on his personal recognizance without surety may petition the superior court for a review of the order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk, the juvenile probation officer or the community supervision officer whichever is applicable, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and of the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance without surety to the superior court for the county in which the district court is located, if a justice thereof is then sitting, or to the superior court of the nearest county in which a justice is then sitting; the clerk of the district court shall transmit forthwith to the clerk of the superior court, copies of all relevant records of the district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the designated court staff. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the superior court on the same day the petition shall have been filed, unless the district court or the detaining authority shall determine that such appearance and hearing on the petition cannot practically take place before the adjournment of the sitting of the superior court for that day and in which event, the petitioner shall be caused to be brought before the court for such hearing during the morning of the next business day of the sitting of the superior court. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers herein above described from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to the superior court without the issuance of any writ or other legal process, provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court.

The superior court shall in accordance with the standards set forth in the first paragraph of this section, hear the petition for review as speedily as practicable and except for unusual circumstances, on the same day the petition is filed; provided, however, that the court may

continue the hearing to the next business day if the required records and other necessary information are not available. The justice of the superior court may, after a hearing on the petition for review, order that the petitioner be released on bail on his personal recognizance without surety, or, in his discretion, to reasonably assure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he was ordered committed by the district court.

If a defendant has posted bail in the district court and has subsequently been arraigned in the superior court for the same offense, the superior court clerk shall notify the district court clerk holding the defendant's bail of such arraignment. Upon such notification, the amount of any bail bond posted by a defendant in the district court shall be carried over to a bail bond required by the superior court. The superior court justices' discretion in setting the amount of bail shall not be affected by the provisions of this paragraph.

Except where the defendant has defaulted on his recognizance or has been surrendered by a probation officer, community supervision officer, or designated court staff an order of bail or recognizance shall not be revoked, revised or amended by the district court, because the defendant has been bound over to the superior court; provided, however, that if any court, in its discretion, finds that changed circumstances or other factors not previously known or considered, make the order of bail or recognizance ineffective to reasonably assure the appearance of the defendant before the court, the court may make a further order of bail, either by increasing the amount of the recognizance or requiring sufficient surety or both, which order will not revoke the order of bail or recognizance previously in force and effect. The court may also review such changed circumstances or other factors not previously known or considered in accordance with the third paragraph of this section.

The chief justice of the district court department and the chief justice of the Boston municipal court department shall prescribe forms for use in their respective courts, for the purpose of notifying a defendant of his right to file a petition for review in the superior court, forms for a petition for review and forms for the implementation of any other procedural requirements. The clerk of courts shall forthwith notify the district court of all orders or judgments of the superior court on petitions for review. Costs or expenses of services and transportation under this section shall be ordered paid in the amount determined by the superior court out of the state treasury.

For an offense enumerated in section 58A, and upon the motion of an attorney for the commonwealth for an order of pretrial detention or imposition of conditions of release based on dangerousness, a justice of the district or superior court shall hold a hearing pursuant to the provisions of subsection (4) of section 58A and shall admit such person to bail on his personal recognizance without surety or subject to conditions of release unless the justice, determines, in the exercise of his discretion, that such release will endanger the safety of any other person or the community.

SECTION 44. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:-

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209 A or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A or while an order of protection issued under chapter 209A was in effect against such person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268

or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269; provided, however, that the commonwealth may not move for an 882 order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon; or arrested and charged with a violation of section 10G of chapter 269.

SECTION 45. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (7) and inserting in place thereof the following subsection:-

(7) A person aggrieved by the denial of a district court justice to admit him to bail on his personal recognizance with or without surety may petition the superior court for a review of the order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to the petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance with or without surety to the superior court for the county in which the district court is located, if a justice thereof is then sitting, or to the superior court of the nearest county in which a justice is then sitting. The clerk of the district court shall transmit forthwith to the clerk of the superior court, copies of all relevant records of the district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the district court. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the superior court within 2 business days of the petition having been filed. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers described above from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to the superior court without the issuance of any writ or other legal process; provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court.

The superior court shall in accordance with the standards set forth in section 58A, hear the petition for review under section 58A as speedily as practicable and in any event within 5 business days of the filing of the petition. The justice of the superior court hearing the review may consider the record below which the commonwealth and the person may supplement. The justice of the superior court may, after a hearing on the petition for review, order that the petitioner be released on bail on his personal recognizance without surety, or, in his discretion, to reasonably assure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he was ordered committed by the district court.

SECTION 46. Section 58B of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 33, the words "or probation" and inserting in place thereof the following words:- the probation department in the juvenile or probate court or the department of community supervision.

SECTION 47. Chapter 276 of the General Laws, as so appearing, is hereby further amended by inserting after section 58B the following section:-

Section 58C. The sheriff of any county or the commissioner of correction, subject to rules and

regulations established in accordance with the provisions of this section, may permit a detainee who is subject to a court order of bail, except those being held for offenses listed in this section, to be classified to a pretrial diversion program operated by the sheriff's office in the county of the court ordering the bail. The pretrial diversion program shall include electronic monitoring; provided further, that the sheriff's office may prescribe a program administrative fee to be paid by each sentenced inmate or pre-trial detainee participating in the program that shall be determined according to the person's ability to pay, finances, household income, number of dependents and medical status. The inability to pay all or a portion of the program fees shall not preclude participation in the program and eligibility shall not be enhanced by reason of ability to pay. For those deemed unable to pay, the sheriff's office shall agree to cover the cost for participants at a reduced and agreed upon rate with the electronic monitoring agency or entity. The sheriff may extend the limits of the place of confinement of a detainee for the purpose of participation in this program and shall establish a classification system to determine the suitability of detainees who may be potential participants in this program. A person permitted to be away from the jail due to participation in this program may be accompanied by an employee of the sheriff's office in the discretion of the sheriff or his designee.

For the duration of his participation in the program, the detainee shall be deemed to be in custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of chapter 127 and section 33A of chapter 279 toward any sentence he may receive, and may be charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he is classified to pursuant to his participation in the program without authorization or should they escape from custody while they are being transported pursuant to their participation in the program. Additionally for the duration of his participation in this program only, the detainee may receive additional deductions from any sentence that may be imposed in the matter on which he was committed, for participation in work, education, or treatment programs designated by the sheriff pursuant to section 129D of chapter 127.

A detainee shall not be eligible to participate in this program if he is:

detained under subsection (3) of section 58A of chapter 276; charged with a felony offense that has an element of the offense the use, attempted use, or threatened use of physical force against the person of another, or any other felony that by its nature involves a substantial risk that physical force against the person of another may result, including the crime of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A or while an order of protection issued under chapter 209A was in effect against the person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90. Placement of an individual in such program shall require victim notification as required under subsection (t) of section 3 of chapter 258B.

SECTION 48. Sections 83, 96 and 102 of chapter 276 are hereby repealed.

SECTION 49. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 85 and inserting in place thereof the following section:-

Section 85. Each person who receives an appointment as a probation officer shall, within 6 months of the date of his appointment, attend a basic orientation training course conducted by the commissioner of probation pursuant to section 99. All probation officers shall attend at least every 3 years an in-service training course pursuant to this section. In addition to the other duties imposed upon him, each probation officer shall, as the court may direct, inquire into the nature of every juvenile case brought before the court under the appointment of which he acts, and inform the court, so far as is possible, of prior delinquency or youthful offender involving the juvenile before the court. Such record of the probation officer shall also be made available to

the juvenile and the juvenile's counsel for inspection. He may recommend to the justice of his own court that any juvenile found delinquent be placed on probation. He shall perform such other duties as the court requires. He shall keep full records of all cases investigated by him or placed in his care by the court, and of all duties performed by him. Every person released upon probation shall be given by the probation officer a written statement of the terms and conditions of the release.

SECTION 50. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 87 and inserting in place thereof the following section:-

Section 87. The superior, municipal or district court may place on community supervision in the care of a community supervision officer any person before it charged with an offense or a crime for such time and upon such conditions as it deems proper, with the defendant's consent, before trial and before a plea of guilty, or in any case after a finding or verdict of guilty; provided, that, in the case of any child under the age of 17 placed upon community supervision by the superior court, he may be placed in the care of a probation officer of any juvenile court or any juvenile session of the district court, within the judicial district of which such child resides; and provided further, that no person convicted under section 22A or 24B of chapter 265 or section 35A of chapter 272 shall, if it appears that he has previously been convicted under those sections and was 18 years of age or older at the time of committing the offense for which he was so convicted, be released on community supervision prior to the completion of 5 years of his sentence. Any juvenile court and any juvenile session of the district or municipal court may place on probation in the care of its probation officer any juvenile before it charged with an offense or a crime for such time and upon such conditions as it deems proper, with the juvenile's consent, before trial and before a plea of guilty, or in any case after a finding or verdict of guilty.

SECTION 51. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 87A and inserting in place thereof the following section:-

Section 87A. The conditions of probation imposed by a court upon a juvenile under section 87 of this chapter, section 58 of chapter 119 or section 1 or section 1A of chapter 279, may include, but shall not be limited to, participation by the person in specified rehabilitative programs or performance by the juvenile of specified community service work for a stated period of time.

SECTION 52. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 88 and inserting in place thereof the following section:-

Section 88. Every juvenile court and juvenile session of the district court appointing probation officers may employ such clerical assistance as it deems necessary to keep, index and consolidate the records required to be kept by probation officers and for such other work in connection with its probation service as the court may determine. The compensation for such service, together with such other necessary expenses as the court shall incur in connection with such work, shall be paid by the commonwealth upon vouchers approved by the court.

The administrative justices for the district court and juvenile court departments, in consultation with the commissioner of probation, may designate and redesignate such juvenile divisions thereof, including in such term the Boston juvenile court, the Worcester juvenile court, the Bristol county juvenile court and the Springfield juvenile court, within each of the counties of the commonwealth as in the opinion of the administrative justices should join in the establishment of a probation district office for the clerical service of the probation officers of the divisions thereof so designated or redesignated and the divisions so designated or redesignated shall thereupon consult with the chief administrative justice of the trial court and the commissioner of probation as to the establishment of such a probation district office, and shall join in the employment of such clerical assistance as is necessary to keep, index and consolidate the records in such form as may be required by the commissioner of probation in connection with the probation service of the courts. The compensation for such service, together with such other necessary expenses as the courts shall incur in connection with such work, shall be paid by the commonwealth upon vouchers approved by 1 of the justices of the courts,

designated by the administrative justices.
SECTION 53. Section 89 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the words “The superior court or the justice of a district court”, and inserting in place thereof the following words:- The juvenile court and the justice of a juvenile session of the district court.
SECTION 54. Section 89 of chapter 276 of the General Law, as so appearing, is hereby further amended by striking out, in line 31, the words “The justice of a district court”, and inserting in place thereof the following words:- The juvenile court the justice of a juvenile session of the district court.
SECTION 55. Section 90 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in lines 4-5, the words “, and if appointed by the superior court may, by its direction, act in any part of the commonwealth”.
SECTION 56. Section 92 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the word “person”, and inserting in place thereof the following word:- juvenile.
SECTION 57. Section 93 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in lines 2-3, the words “probation officer under order of the court by which he is appointed”, and inserting in place thereof the following words:- probation officer under order of the juvenile or probate court by which he is appointed, or community supervision officer.
SECTION 58. Chapter 276 is hereby amended by striking out section 94 and inserting in place thereof the following section:-
Section 94. The reasonable expenses, including supplies and equipment, incurred by probation officers of the probate court in the performance of their duties shall be approved and apportioned by the court, and paid by the commonwealth. Such reasonable expenses shall include the traveling expenses necessarily incurred by such a probation officer in connection with attendance at sessions of the court outside of the town in which the principal office of such probation officer is maintained, such expenses to be computed from and to the town. Money to be used for the necessary expenses to be incurred by such a probation officer in going outside the commonwealth for the purpose of bringing back for surrender to the court a person who is on probation shall be advanced by the treasurer of the commonwealth, upon presentation of a certificate signed by the probation officer and approved by the court. After his return such probation officer shall account for such money by filing with the state treasurer itemized vouchers, duly sworn to, approved by the court, setting forth the necessary expenses so incurred and any unexpended balance of such money shall be paid to the state treasurer.
Subject to section 81 of chapter 218, probation officers of juvenile courts or the juvenile sessions of the district courts shall be reimbursed by the commonwealth for their actual disbursements for necessary expenses incurred while in the performance of their duties, including their reasonable traveling expenses in attending conferences authorized by section 99 of this chapter, not exceeding $400 to each in any 1 year, upon vouchers approved by the court by which they are appointed.
SECTION 59. Chapter 276 is hereby amended by striking out section 95 and inserting in place thereof the following section:-
Section 95. The superior courts or the Boston, Springfield, Bristol county and Worcester juvenile courts or a district court may authorize a community supervision or probation officer to expend such amount as the court considers expedient for the temporary support or transportation, or both, of a person placed on community supervision or probation. A record of any amount so authorized shall be entered on the clerk’s docket of the case.
SECTION 60. Section 97 of chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after the words “a probation officer”, in line 2, the following words:- of the juvenile or probate court, or a community supervision officer.

SECTION 61. Section 99 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words “in all of the courts”, and inserting in place thereof the following words:- in all of the probate courts, juvenile courts and juvenile sessions of the district courts.

SECTION 62. Section 99B of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the words “in those courts or regions”, and inserting in place thereof the following words:- in those probate courts, juvenile courts or juvenile sessions of the district courts.

SECTION 63. Section 99E of chapter 276, of the General Laws, as so appearing, is hereby amended by striking out , in lines 5, 9 and 10, the words, “The commissioner of probation”, and inserting in place thereof the following words:- The administrative office of the trial court.

SECTION 64. Chapter 276 is hereby amended by striking out section 100 and inserting in place thereof the following section:-

Section 100. Every probation officer, or the chief or senior probation officer of a court having more than 1 probation officer, shall transmit to the commissioner of probation, in such form and at such times as he shall require, detailed reports regarding the work of probation in the probate court, juvenile courts, and juvenile sessions of the district court; and under the direction of the commissioner a record shall be kept of all such cases as the commissioner may require for the information of the justices and probation officers. Police officials shall co-operate with the commissioner and the probation officers in obtaining and reporting information concerning persons supervised by the office of the commissioner of probation. The information so obtained and recorded shall not be regarded as a public record and shall not be open for public inspection but shall be accessible to the justices and probation officers of the courts, to the police commissioner for the city of Boston, to all chiefs of police and city marshals, and to such departments of the state and local governments as the commissioner may determine appropriate. Upon payment of a fee of $3.00 for each search, such records shall be accessible to such departments of the federal government and to such educational and charitable corporations and institutions as the commissioner may determine appropriate. The department of youth services shall at all times give to the commissioner and the probation officers such information as may be obtained from the records concerning persons committed to the department of youth services or who have been released. The commissioner may use systems operated by the criminal history systems board, pursuant to sections 167 to 178, inclusive, of chapter 6, for any record-keeping lawfully required by him provided that such records remain subject to the regulations of the board.

SECTION 65. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 100A and inserting in place thereof the following section:-

Section 100A. Any person having a record of criminal court appearances and dispositions in the commonwealth may, on a form furnished by the administrative office of the trial court and signed under the penalties of perjury, request that the court seal the record in its files. The court shall comply with the request provided that: (1) the person’s court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any misdemeanor record to be sealed occurred not less than 5 years before the request; (2) the person’s court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any felony record to be sealed occurred not less than 10 years before the request; (3) the person had not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, 5 years before the request, and in the case of a felony, 10 years before the request, except motor vehicle offenses in which the penalty does not exceed a fine of $50; (4) the form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county in the case of a misdemeanor,

within the preceding 5 years, and in the case of a felony, within the preceding 10 years; and (5) the person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses; provided, however, that this section shall not apply in case of convictions for violations of sections 121 to 131H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268A.
In carrying out the provisions of this section, notwithstanding any laws to the contrary:
(1) Any recorded offense which was a felony when committed and has since become a misdemeanor shall be treated as a misdemeanor.
(2) Any recorded offense which is no longer a crime shall be eligible for sealing forthwith, except in cases where the elements of the offense continue to be a crime under a different designation.
(3) In determining the period for eligibility, any subsequently recorded offenses for which the dispositions are "not guilty", "dismissed for want of prosecution", "dismissed at request of complainant", "nol prossed", or "no bill" shall not be held to interrupt the running of the required period for eligibility.
(4) If it cannot be ascertained that a recorded offense was a felony when committed the offense shall be treated as a misdemeanor.
(5) Any violation of section 7 of chapter 209A shall be treated as a felony.
(6) Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing for 15 years following their disposition, including termination of supervision, probation or any period of incarceration, or for so long as the offender is under a duty to register in the commonwealth or in any other state where the offender resides or would be under such a duty if residing in the commonwealth, whichever is longer.
When records of criminal appearances and criminal dispositions are sealed by the court in its files, the court shall notify forthwith the criminal history systems board, which likewise shall seal records of the same proceedings in the criminal justice information system files.
Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public service in the service of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions, except in imposing a sentence in subsequent criminal proceedings, and except that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5, inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive, of chapter 210, a party having reasonable cause to believe that information in a sealed criminal record of another party may be relevant to (1) an issue of custody or visitation of a child, (2) abuse, as defined in section 1 of chapter 209A or (3) the safety of any person may upon motion seek to introduce the sealed record into evidence. The judge shall first review such records in camera and determine those records that are potentially relevant and admissible. The judge shall then conduct a closed hearing on the admissibility of those records determined to be potentially admissible; provided, however, that such records shall not be discussed in open court and, if admitted, shall be impounded and made available only to the parties, their attorneys and court personnel who have a demonstrated a need to receive them.
An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "An applicant for employment with a sealed record on file with the court may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution." The attorney general may enforce the provisions of this paragraph by a suit in equity commenced in the superior court.

The court, in response to inquiries by authorized persons other than any law enforcement agency or any appointing authority, shall in the case of a sealed record or in the case of court appearances and adjudications in a case of delinquency or the case of a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution, report that no record exists.

SECTION 66. Chapter 276 as so appearing, is hereby amended by striking out section 100B and inserting in place thereof the following section:-

Section 100B. Any person having a record of entries of a delinquency court appearance in the commonwealth may, on a form furnished by the administrative office of the trial court, signed under the penalties of perjury, request that the court seal the record in its files. The court shall comply with such request provided: (1) that any court appearance or disposition including court supervision, probation, community supervision, commitment or parole, the records for which are to be sealed, terminated not less than 3 years before the request; (2) that the person has not been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the 3 years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of $50 nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceding 3 years; and (3) the form includes a statement by the petitioner that he has not been adjudicated delinquent or found guilty of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or committed as a delinquent in any state or county within the preceding 3 years.

When records of delinquency appearances and delinquency dispositions are sealed by the court in its files, the court shall notify forthwith the criminal history systems board, which likewise shall seal records of the same proceedings in the criminal justice information system files.

Such sealed records of a person shall not operate to disqualify a person in any future examination, appointment or application for public service under the government of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards of commissioners, except in imposing sentence for subsequent offenses in delinquency or criminal proceedings.

Notwithstanding any other provision to the contrary, the court shall report such sealed delinquency record to inquiring police and court agencies only as “sealed delinquency record over 3 years old” and to other authorized persons who may inquire as “no record”. The information contained in the sealed delinquency record shall be made available to a judge or probation or community supervision officer who affirms that such person, whose record has been sealed, has been adjudicated a delinquent or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed subsequent to the sealing of such record. The information shall be used only for the purpose of consideration in imposing the sentence.

SECTION 67. Chapter 276, as so appearing, is hereby amended by striking out section 100C and inserting in place thereof the following section:-

Section 100C. In any criminal case wherein the defendant has been found not guilty by the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable cause has been made by the court, the court shall seal the court appearance and disposition recorded in its files. The provisions of this paragraph shall not apply if the defendant makes a written request to the court to keep the records of the proceedings unsealed.

In any criminal case wherein a nolle prosequi has been entered, or a dismissal has been entered by the court, and it appears to the court that substantial justice would best be served, the court shall seal the records of the proceedings in its files. The court shall notify forthwith the criminal history systems board, which likewise shall seal records of the same proceedings in the criminal justice information system files.

Such sealed records shall not operate to disqualify a person in any examination,

appointment or application for public employment in the service of the commonwealth or of any political subdivision thereof.
An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include in addition to the statement required under section 100A the following statement: "An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court appearances." The attorney general may enforce the provisions of this section by a suit in equity commenced in the superior court.
The court, in response to inquiries by authorized persons other than any law enforcement agency, shall in the case of a sealed record report that no record exists. After a finding or verdict of guilty on a subsequent offense such sealed record, with the exception of a not guilty, a no bill, or a no probable cause, shall be made available by the court to criminal justice agencies.
SECTION 68. Chapter 276, as so appearing, is hereby amended by inserting after section 100C the following section:-
Section 100D. Notwithstanding any provision of section 100A, 100B, or 100C of this chapter, criminal justice agencies as defined in section 167 of chapter 6 shall have immediate access to, and be permitted to use as necessary for the performance of their criminal justice duties, any sealed criminal offender record information as defined in section 167 of chapter 6 and any sealed information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 17.
SECTION 69. All criminal or juvenile delinquency records maintained by the office of the commissioner of probation as of the effective date of this chapter, including the statewide domestic violence record keeping system established in section 7 of chapter 188 of the acts of 1992, are hereby transferred to the administrative office of the trial court to own, administer, operate and control.
SECTION 70. Section 101A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking, in lines 2-3, the words, "district courts", and inserting in place thereof the following words:- probate courts, juvenile courts and juvenile sessions of the district court.
SECTION 71. Section 101A of chapter 276 of the General Laws, as so appearing, is hereby further amended by striking out in line 7, the words "district and", and inserting in place thereof the following words:- district, probate or.
SECTION 72. Chapter 276A of the General Laws, as so appearing, is hereby amended by striking out section 1 and inserting in place thereof the following section:-
Section 1. The following words, as used in this chapter, unless the context otherwise requires, shall have the following meanings:
"Assessment", a thorough and complete measurement of the needs of an individual in, but not limited to, the following areas: education, vocational training, job placement, mental and physical health, family and social services, and an analysis of a defendant's commitment to participate in a program of community supervision and services.
"Commissioner", the commissioner of community supervision.
"Director", the person in charge of the operation of a program of community supervision and services.
"Pretrial diversion designee", a community supervision officer of the department of community supervision designated by the commissioner of the department to assist the superior, municipal, or district court to screen defendants who may be eligible for diversion.
"Plan of service", a comprehensive and cohesive set of recommended programs and specific services to meet the needs of individuals as determined through assessment.
"Program", any program of community supervision and services certified or approved by the commissioner under the provisions of section 8, including, but not limited to, medical, educational, vocational, social and psychological services, corrective and preventive guidance,

training, performance of community service work, counseling, provision for residence in a halfway house or other suitable place, and other rehabilitative services designed to protect the public and benefit the individual.

SECTION 73. Section 3 of chapter 276A of the General Laws, as so appearing, is hereby amended by striking out, in lines 1-2, the words “probation officers of a district or municipal court, or their official designee”, and inserting in place thereof the following words:- pretrial diversion designee.

SECTION 74. Section 3 of chapter 276A of the General Laws, as so appearing, is hereby further amended by striking out, in lines 14-15, the words “probation office or its official designee”, and inserting in place thereof the following words:- pretrial diversion designee.

SECTION 75. Section 9 of chapter 276A of the General Laws, as so appearing, is hereby amended by inserting before the words “the attorney general”, in line 3, the following words:- the secretary of public safety and security or his designee.

SECTION 76. Chapter 279 of the General Laws, as so appearing, is hereby amended by striking out section 1 and inserting in place thereof the following section:-

Section 1. When a person convicted before a court is sentenced to imprisonment, the court may direct that the execution of the sentence, or any part thereof, be suspended and that he be placed on community supervision for such time and on such terms and conditions as it shall fix. When a person so convicted is sentenced to pay a fine and to stand committed until it is paid, the court may direct that the execution of the sentence, or any part thereof, be suspended for such time as it shall fix and in its discretion that he be placed on community supervision on condition that he pay the fine within such time. If the fine does not exceed $200 and the court finds that the defendant is unable to pay it when imposed, the execution of the sentence shall be suspended and he may, in the court’s discretion be placed on community supervision, unless the court shall find that he will probably default, or that such suspension will be detrimental to the interests of the public. If he is committed for nonpayment of a fine, the order of commitment shall contain a recital of the findings of the court on which suspension is refused. The fine shall be paid in 1 payment, or in part payments, to the clerk’s office, and when fully paid the order of commitment shall be void. The clerk of the court shall give a receipt for every payment so made, shall keep a record of the same, shall pay the fine, or all sums received in part payment thereof, to the sheriff if such fine is imposed in the superior court, or remain with the clerk of the court if such fine is imposed in the district court, at the end of the period of community supervision or any extension thereof, and shall keep on file the sheriff’s or clerk’s receipt therefor. If during or at the end of the period the clerk of the court shall report that the fine is in whole or in part unpaid, and in his opinion the person is unwilling or unable to pay it, the court may either extend the period, place the case on file or revoke the suspension of the execution of the sentence. When such suspension is revoked, in a case where the fine has been paid in part, the defendant may be committed for default in payment of the balance.

The provisions of this section shall not permit the suspension of the execution of the sentence of a person convicted of a crime punishable by death or imprisonment for life. In granting community supervision under this section, the court shall include in its terms and conditions of community supervision that the person convicted shall pay any child support due under a support order, as defined in section 1A of chapter 119A, including payment toward any arrearage of support that accrues or has accrued or compliance with any payment plan between the person convicted and the IV-D agency as set forth in chapter 119A.

When a person is sentenced by a court upon conviction of any crime, he shall be informed by the clerk of the court on a form provided by the criminal history systems board that he will have a criminal record that may be accessible to the public under certain conditions, and of his rights pertaining thereto, as provided in sections 167 through 178 of chapter 6.

SECTION 77. Chapter 279 of the General Laws, as so appearing, is hereby amended by striking out section 1A and inserting in place thereof the following section:-

Section 1A. When a person convicted before a court is sentenced to fine and imprisonment, the court may direct that the execution of the sentence, or any part thereof, be suspended, and that he be placed on community supervision for such time and on such terms and conditions as it shall fix. The court may direct, as 1 of such terms and conditions, that payment of the fine shall be made to the clerk of the court in 1 payment, or in part payments, during the period of community supervision or any extension thereof, and when such fine shall have been fully paid the order of commitment as to the fine shall be void, but the order of commitment as to imprisonment shall not be affected by such payment. The clerk of the court shall record a receipt for every payment so made, shall keep a record of the same, shall pay the fine, or all sums received in part payment thereof, to the clerk of the court at the end of the period of community supervision or any extension thereof, and shall keep on file the clerk's receipt therefor. If during or at the end of the period the clerk of the court shall report that the fine is in whole or in part unpaid, and in his opinion the person is unwilling or unable to pay it, the court may either extend the period, place the case on file or revoke the suspension of the execution of the sentence. When such suspension is revoked, in a case where the fine has been paid in part, the defendant may be committed for default in payment of the balance, and may also be committed for the term of imprisonment fixed in the original sentence. This section shall not permit the suspension of the execution of the sentence of any person convicted of a crime punishable by imprisonment for life or of a crime an element of which is being armed with a dangerous weapon, or of any person convicted of any other felony if it shall appear that he has been previously convicted of any felony. In granting community supervision under this section, the court shall include in its terms and conditions of community supervision that the person convicted shall pay any child support due under a support order, as defined in section 1A of chapter 119A, including payment toward any arrearage of support that accrues or has accrued or compliance with any payment plan between the person convicted and the IV-D agency as set forth in chapter 119A.

SECTION 78. Chapter 279 of the General Laws, as so appearing, is hereby amended by striking out section 3 and inserting in place thereof the following section:-

Section 3. At any time before final disposition of the case of a person placed under probation or community supervision or in the custody or care of a probation or community supervision officer, such officer may arrest him without a warrant and take him before the court, or the court may issue a warrant for his arrest. When taken before the court, it may, if he has not been sentenced, sentence him or make any other lawful disposition of the case, and if he has been sentenced, it may continue or revoke the suspension of the execution of his sentence; provided however, that in all cases where the person subject to the surrender is served with notice of surrender and at least 1 of the underlying crimes for which he is on probation or community supervision is a felony, then the probation or community supervision officer shall provide a duplicate copy of the notice of surrender to the district attorney, and the court shall provide to the district attorney the opportunity to be heard and present evidence at the surrender hearing. If such suspension is revoked, the sentence shall be in full force and effect. If a warrant has been issued by the court for the arrest of such a person and he is a prisoner in any correctional institution, jail or house of correction, the commissioner of correction, the sheriff, master or keeper of the house of correction, or in Suffolk county, the penal institutions commissioner of the city of Boston, as the case may be, having such prisoner under his supervision or control, upon receiving notice of such warrant, shall notify such prisoner that he has the right to apply to the court for prompt disposition thereof. Such an application shall be in writing and given or sent by such prisoner to the commissioner of correction, or such sheriff, master, keeper, or penal institutions commissioner, who shall promptly forward it to the court from which the warrant issued, by certified mail, together with a certificate of the commissioner of correction, sheriff, master, keeper, or penal institutions commissioner, stating: (a) the term of commitment under which such prisoner is being held, (b) the amount of time served, (c) the amount of time remaining to

be served, (d) the amount of good time earned, (e) the time of eligibility for release to community supervision of such prisoner, and (f) any decisions of the board of parole relating to such prisoner. The commissioner of correction, sheriff, master, keeper, or penal institutions commissioner shall notify the appropriate district attorney by certified mail of such application to the court. Any such prisoner shall, within 6 months after such application is received by the court, be brought into court for sentencing or other lawful disposition of his case as provided above.

In no case where a provision of this chapter provides for a finding, disposition or other order to be made by the court, or for a warrant to be issued, shall such be made or issued by any person other than a justice, special justice or other person exercising the powers of a magistrate.

Notwithstanding any restriction in the preceding paragraph, if a probation or community supervision officer has probable cause to believe that a person placed under probation or community supervision or in the custody or care of a probation or community supervision officer pursuant to sections 42A, 58A or 87 of chapter 276 or any other statute that allows the court to set conditions of release, has violated the conditions set by the court, the probation or community supervision officer may arrest the person or may issue a warrant for the temporary custody of the person for a period not to exceed 72 hours or until the next sitting of the court, during which period the probation or community supervision officer shall arrange for the appearance of the person before the court pursuant to the first paragraph of this section. Such warrant shall constitute sufficient authority to a probation or community service officer and to the superintendent, jailer, or any other person in charge of any jail, house of correction, lockup, or place of detention to whom it is exhibited, to hold in temporary custody the person detained pursuant thereto.

SECTION 79. Notwithstanding any general or special law to the contrary, chapter 127C of the General Laws shall apply to any felony, as defined in section 1 of chapter 274, committed on or after the effective date of this act.

AMENDMENT NO. 43 ADOPTED

Representative Wolf of Cambridge moves to amend H 4703 in Section 8 by inserting after Section 167A subsection (e) the following subsection;

section 167A (f) The Department shall assure that no backlog of criminal offender records requests develop that impede necessary information related to employment, housing and other essential activities and services from being produced. If a backlog begins to develop, the Commissioner shall report the nature of the backlog and its impact on services to the Secretary of Public Safety and shall take action to remediate the cause of the backlog.

AMENDMENT NO. 44 WITHDRAWN

Mr. Keenan of Salem moves to amend the bill in Section 21, by adding at the end of the section, the following text:

Section 21(a)(x)A social referral service provider, defined as any service for a fee providing for the matching of members of consenting adults by use of computer or any other means for the purpose of dating and general social contact.

AMENDMENT NO. 45 WITHDRAWN

Ms. Dykema of Holliston, Ms. Grant of Beverly, Ms. Gregoire of Marlborough, Mr. Hecht of Watertown, and Mr. Lewis of Winchester move that House Bill 4703 be amended by inserting, after Section 127, the following new sections: --

SECTION 128 There shall be established a special commission to investigate and study the feasibility, advisability and fiscal impact of transferring authority over the Department of Probation, including, but

not limited to, the power of appointment, assignment, discipline, or termination of staff, to either the Chief Justice for Administration and Management of the judicial department or the Executive Office of Public Safety and Security, in an effort to best provide enhanced accountability, oversight, leadership, effectiveness in carrying out essential functions, and efficiency of administration. The study shall include, but not be limited to, consideration of models from other states, best practices for management in government, performance measures, clarity of reporting lines and responsibilities, and opportunities for budget savings through efficiencies, all while protecting the safety of the public. The commission shall consider, in its investigation and study, the reports and recommendations of both the visiting committee on management of the state courts and the court management advisory board. The commission shall consist of the Senate and House chairs of the Joint Committee on the Judiciary, the chairs of the Senate and House committees on Ways and Means, the Senate and House chairs of the Joint Committee on Public Safety, the minority leader of the Senate or his designee, the minority leader of the House of Representatives or his designee, the Attorney General or her designee, who shall serve as chair, the state auditor or his designee, a representative of the Massachusetts Taxpayers Foundation, a representative of the Boston Bar Association, a representative of the Massachusetts Bar Association, and three recognized experts in the field of community supervision, one each appointed by the Senate President, Speaker of the House of Representatives and the Governor. The commission shall report its findings and recommendations to the Joint Committee on Judiciary, the Joint Committee on Public Safety, and the Senate and House Committees on Ways and Means not later than October 1, 2010.

SECTION 129 Applicants for the following positions within the Department of Probation hired after May 26, 2010 shall be subject to Civil Service under Chapter 31 of the Massachusetts General Laws: probation officers, associate probation officers, probation officers-in-charge, assistant chief probation officers and chief probation officers.

SECTION 130 The Commissioner of Probation shall operate a searchable website, accessible to the public at no cost, that is updated at least monthly and includes:

1. Number of probation staff and the courts to which they are assigned
2. Number of probation staff that directly supervise offenders
3. Number of offenders under supervision by the Department of Probation
4. Number of offenders on an electronic monitoring device
5. Number of probationers using community corrections centers

AMENDMENT NO. 46 WITHDRAWN

Ms. L'Italien of Andover moves to amend House, No. 4703, in section 21, striking out subsection 10, and inserting in place thereof the following paragraph:

"(10) An agency providing services in a home or community-based setting for any elderly person or disabled person or who will have direct or indirect contact with such elderly or disabled persons or access to such persons' files may obtain from the department data permitted under section 172C."; and

by inserting in section 22, after the word "chapter 258B," in line 461, the following words:

"any individual hiring personal care attendants or other personal caretakers under the commonwealth's personal care attendant program".

AMENDMENT NO. 47 WITHDRAWN

Representative Kujawski of Webster moves to amend the bill by striking out sections 67, 69, 70, and 123.